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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No.: Case No. BK-S-23-10423-MKN

Chapter 11

**DEPOSITION DESIGNATION OF
CORPORATE REPRESENTATIVE FOR
COLE KEPRO INTERNATIONAL, LLC
FRED COOK IN CONNECTION WITH
EVIDENTIARY HEARING ON MOTION
TO APPROVE SETTLEMENT
AGREEMENT WITH COLE KEPRO
INTERNATIONAL, LLC
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019**

Hearing Date: November 28, 2023
Hearing Time: 1:30 p.m.

1
2 Pursuant to LR 7032, Christopher McAlary ("Mr. McAlary") by and through his attorneys
3 of record, Carlyon Cica Chtd. and Diamond McCarthy LLP, hereby designates the following
4 portions of deposition to be submitted into evidence in connection with the Evidentiary Hearing set
5 for November 28, 2023, at 1:30 p.m.

6 Christopher McAlary designates the following sworn testimony given by Corporate
7 Representative for Cole Kepro International, LLC - Fred Cook on November 7, 2023. Pursuant to
8 LR 7032(a), a full transcript of the testimony, including Reporter's certification, is attached hereto
9 as Exhibit 1.

10 **PORTIONS OF DEPOSITION TRANSCRIPT DESIGNATED BY MCALARY:**

11 Page 8:

12 24 A I am Frederick Albert Cook, Junior. I am
13 25 the chief executive officer of Cole Kepro

14 Page 13:

15 4 What did you do to prepare for
16 5 today's deposition?
17 6 A Went and checked the Zoom link to make sure
18 7 that I could get it working and spent a few minutes
19 8 this morning with my attorney...
20 15 Have you spoken to anyone that is not your
21 16 attorney about giving your deposition here today?
22 17 A No.

23 Page 15:

24 8 Exhibit Number 1 is the subpoena for
25 9 today's deposition. Have you seen this document
26 10 before?
27 11 A I have not.

28 Page 24:

1 15 MR. MATOTT: Same objection, and the
2 16 record can reflect that we actually don't have an
3 17 objection to Topic Number 5, just 4.

4 18 MR. STROTHER: Thank you.

5 19 THE WITNESS: And I'm prepared to speak
6 20 to that.

7 Page 25:

8 23 Topic Number 8 is "your communications with
9 24 any party regarding Corporate Advantage Policy Policy
10 25 Number 5129818, issued by Euler Hermes North American

11 Page 26:

12 1 Insurance Company." Are you prepared to talk -- to
13 2 testify about Topic Number 8 today?

14 3 A I'll defer to my attorneys.

15 ...

16 22 Q But are you aware of your -- Cole Kepro's
17 23 attorneys communicating with other parties about the
18 24 insurance policy?

19 25 A I am not aware of the particulars. I am not

20 Page 27:

21 1 aware of my attorneys discussing the insurance policy
22 2 with anyone.

23 4... Are you aware of anyone other than you, Mr.

24 5 Cook, on Cole Kepro's behalf communicating with any
25 6 other party about Cole Kepro's insurance policy?

26 7 A I know that we have disclosed the existence
27 8 of the insurance policy, but the particulars, I'm not
28 9 aware of any -- anyone other than my attorneys.

1 ...

2 17 ... Are you aware of anyone other

3 18 than you who could testify about Cole Kepro's

4 19 communications with other parties about the insurance

5 20 policy?

6 21 A I believe that would be the attorneys at

7 22 Taft.

8 Page 39:

9 11 Q Do you know whether the committee members

10 12 have had any written communications regarding the Cole

11 13 Kepro litigation?

12 14 A I do not know.

13 15 Q So then it's accurate to -- I understand

14 16 your testimony then to be that if such communications

15 17 exist, you've never seen them.

16 18 A That is correct.

17 19 Q What about the offer or offers by Mr.

18 20 McAlary to purchase the Cole Kepro litigation? Have

19 21 you had any involvement in communications with the

20 22 committee about those offers?

21 23 A No.

22 Page 42:

23 1 you're aware that

24 2 the order of those lawsuits was that Cash Cloud sued

25 3 Cole Kepro, then Cole Kepro sued Cash Cloud; right?

26 4 A I'm not aware of that.

27 11 who within Cole Kepro was

28 12 managing that litigation? I'm not asking about what

1 13 your attorneys were doing.

2 14 A That would be our general counsel.

3 15 Q And who is that?

4 16 A Bernadette Dennehy.

5 22 And she's general counsel of the Anderson

6 23 Group.

7 Page 44:

8 24 Q Sure. You're aware that Cash Cloud has sued

9 25 Cole Kepro for breach of contract?

10 Page 45:

11 1 A I'm not sure what they've alleged.

12 15 And I really don't know, being honest, which

13 16 I always am in a deposition, as to what they're

14 17 alleging.

15 Page 47:

16 17 Exhibit 2 is the file-stamped complaint in the lawsuit

17 18 filed by Cash Cloud against Cole Kepro. When is the

18 19 last time you looked at this complaint?

19 20 A It would've been months ago.

20 Page 48:

21 5 So you're now aware that Cash Cloud is

22 6 suing -- filed suit against Cole Kepro for breach of

23 7 contract; yes?

24 8 A I'm reading that.

25 25 Okay. The second cause of action is "Breach

26 Page 49:

27 1 of the Implied Covenant of Good Faith and Fair

28 2 Dealing." Are you aware that Cash Cloud is suing Cole

1 3 Kepro for that cause of action?

2 4 A I'm reading it. I'm reading it.

3 17 When did you first understand that a sale of

4 18 the litigation against Cole Kepro was something that

5 19 was going to happen in the Cash Cloud bankruptcy?

6 21 I was not aware that a sale of the

7 22 litigation is something that was going to happen.

8 Page 51:

9 2 Q And you know that Cash Cloud is not

10 3 reorganizing in bankruptcy; right?

11 4 A I do -- I do know that.

12 5 Q And so you're aware that Cash Cloud is

13 6 selling its assets; true?

14 7 A I know that Cash Cloud is attempting to sell

15 8 its assets.

16 9 Q Which included or includes the litigation

17 10 against Cole Kepro; right?

18 12 I am aware that they are viewed as assets.

19 20 Are you familiar with bids placed by other

20 21 entities for assets of Cash Cloud?

21 22 A I am not.

22 23 Q So when entities would place bids that did

23 24 or did not include the litigation against Cole Kepro,

24 25 were you not made aware of those?

25 Page 52:

26 4 No, I was not aware.

27 Page 53:

28 21 A We've provided the debtor through Province

22 an understanding of the finances of the company.
23 Again, we had the foresight to insure against
24 bankruptcy, and we are holding on to follow this to
25 fruition.

Page 56:

5 My follow-up question is
6 the financial status that you shared with them
7 included information about the many millions that Cole
8 Kepro owed to its lender. Is the lender Fifth Third
9 Bank?
10

11 A It is.

12 Q And how much money does Cole Kepro owe to
13 Fifth Third Bank?

14 A \$11.4 million as of today. When
15 Coin -- when Coin Cloud went bankrupt, we owed them
16 approximately -- a little over 20 million, and in the
17 last 14 months, we've paid them back almost \$10
18 million.

Page 58:

22 Q Has Cole Kepro threatened bankruptcy?

23 A No.

24 Q Has Cole Kepro told anyone that it's
25 considering filing bankruptcy?

Page 59:

1 A No.

2 Q Does Cole Kepro have bankruptcy counsel?

3 A Only supporting me on the Unsecured

4 Creditors' Committee, but no.

1 24 ... I see a good, strong, cash flowing

2 25 company that makes good products.

3 Page 60:

4 3 We paid for an

5 4 insurance policy when we were concerned that we had

6 5 too much concentration in one entity. We made all

7 6 those payments. I want to play the game to collect

8 7 them.

9 8 Q Well, if the insurance policy does not pay,

10 9 do you believe that Cole Kepro is going to make the

11 10 bank whole? And I'm using your words.

12 11 A We do have three or four large

13 12 opportunities, one which I'm not going to disclose

14 13 with a major bank that will dwarf Coin Cloud. So

15 14 there is a possibility to cashflow out of this.

16 15 But the best way out is for the insurance

17 16 company to determine that Coin Cloud is bankrupt, that

18 17 the products that we provided met the fit, form, and

19 18 function that we said they would.

20 Page 61:

21 3 Q Well, you said that the best way

22 4 forward -- I think those were your words, "best way

23 5 forward." It may be that what you just described was

24 6 the best way forward for Cole Kepro and maybe for

25 7 Fifth Third, but why would it be the best way forward

26 8 for the debtor?

27 11 A I -- I could speculate that the debtor

28 12 realized that -- that the lawsuit --

1 14 A -- the lawsuit was bullshit, and this was
2 15 their best way to get some money, because if it -- you
3 16 know...
4 17 When I talked to the -- when I talked to the
5 18 Coin Cloud employees and when I talked to the Coin
6 19 Cloud employees other than the CEO and the CFO, I've
7 20 never been able to confirm any of these issues.
8 23 If Cole Kepro doesn't receive the insurance
9 24 proceeds that we've been discussing, is it likely that
10 25 Cole Kepro would be forced to commence its own

11 Page 62:

12 1 bankruptcy proceedings?
13 4 For the last 14 months, I've been cash
14 5 flowing positive. I've been able to pay the bank back
15 6 a close to \$10 million and over advance, and we're
16 7 still here.
17 8 Q So my question is, is it likely that Cole
18 9 Kepro would have to file for bankruptcy protection if
19 10 it doesn't get the insurance proceeds?

20 11 A That's -- that -- that's an option, not one
21 12 that I've considered at this point.

22 13 Do you think it's likely?

23 14 A No. I think it's likely that we'll move
24 15 forward cash flowing positive, working with the bank,
25 16 and look to either get our day in court or a
26 17 resolution to this lawsuit.

27 Page 64:

28 10 A We -- at -- at a point, we were shipping 500

1 11 kiosks a week, and we were three weeks ahead on

2 12 production when Coin Cloud stopped paying us.

3 Page 66:

4 5 I'm going to ask you to look at Exhibit Number 4.

5 16 Do you see over on the right-hand

6 17 side that this is the motion to approve the settlement

7 18 agreement with Cole Kepro?

8 19 A Yes.

9 25 Please look at paragraph 9a, listing

10 Page 67:

11 1 the first term.

12 4 Q Do I understand correctly or is your

13 5 understanding -- let's ask it that way. Is your

14 6 understanding that this term has Cole Kepro signing a

15 7 promissory note in the amount of \$850,000 to the

16 8 debtor?

17 9 A That is well-stated. That is correct.

18 10 Q Okay. Let me ask you about the second term,

19 11 which is paragraph 9b.

20 15 So is this term basically that Fifth

21 16 Third Bank has agreed to subordinate any interest it's

22 17 got in insurance proceeds so that \$850,000 of

23 18 insurance proceeds could be used to pay off that

24 19 promissory note mentioned in the previous term?

25 20 A That is correct.

26 24 Q And will you please look at the third term,

27 25 which is paragraph 9c?

28 Page 68:

1 2 Is that third term basically
2 3 that Cash Cloud will allow a claim, an unsecured
3 4 claim, by Cole Kepro in the amount of approximately
4 5 \$9.4 million?

5 7 A I read this that Coin Cloud acknowledges
6 8 that there's no dispute, setoff, counterclaim, or
7 9 other objection with respect to the digital cash
8 10 machines.

9 Page 69:

10 8 Q When did Cole Kepro first communicate to the
11 9 debtor or the committee that Cole Kepro was interested
12 10 in a transaction like the one we're looking at right
13 11 now?

14 12 A It would've been late June 2023.

15 13 Q Okay. 2023; right?

16 15 Q How was that communicated to -- first of
17 16 all, was it communicated to the debtor or the
18 17 committee?

19 18 A It was communicated to Tanner James and Dan
20 19 Moses at Province in an email.

21 21 A I sent an email to Tanner James saying I'd
22 22 like to discuss -- I sent an email to Province stating
23 23 in my capacity as the CEO of Cole Kepro, not in my
24 24 capacity as being on the Unsecured Creditors'
25 25 Committee, I was interested in investigating whether

26 Page 70:

27 1 or not we could come to a resolution over this
28 2 dispute.

1 3 Q At that point in time, had you yet
2 4 investigated the possibility of Cole Kepro filing an
3 5 insurance claim on the debt that Cole Kepro alleges is
4 6 owed?

5 7 A We had filed an insurance claim -- my
6 8 understanding is in April of 2022, when Coin Cloud
7 9 went 90 days past due on their -- on their payments
8 10 from the first of the year.

9 16 Did the insurer respond to that claim filed
10 17 by Cole Kepro?

11 18 A I believe they did.

12 19 Q What was that response?

13 20 A They said that -- needed to resolve -- my
14 21 understanding and -- was that the -- the fact that it
15 22 was a disputed receivable kept it from being paid.

16 Page 71:

17 8 When did Cole Kepro inform the insurance
18 9 company that Cash Cloud was disputing the claim?

19 10 A I believe when we filed the insurance claim.

20 18 Did Cole Kepro ever inform the insurance
21 19 company that Cash Cloud had actually sued Cole Kepro?

22 20 A I do not know that for a fact. I assume we
23 21 did, but I do not know that for a fact.

24 22 Q Let's go back to the communications between
25 23 Cole Kepro and the insurance company. After the
26 24 insurance company indicated to Cole Kepro that because
27 25 of there being a dispute, the claim wouldn't be paid

28 Page 72:

1 1 immediately, was there any additional communication
2 2 between Cole Kepro and the insurance company about
3 3 that claim?

4 4 A Not by -- not by me. I know that our
5 5 insurance professionals came back and said Coin Cloud
6 6 going bankrupt would trigger the next step in the
7 7 resolution of the claim.

8 8 Q Has the insurance company ever communicated
9 9 to Cole Kepro one way or the other that it would pay
10 10 Cole Kepro's claim?

11 11 A They have said that we filed it properly,
12 12 and they have never said -- I have not gotten any
13 13 correspondence saying that they would pay or they
14 14 wouldn't pay.

15 15 Q Is there anyone else on Cole Kepro's behalf
16 16 that might have gotten correspondence that said
17 17 they -- that the insurance company would or would not
18 18 pay?

19 19 A Not to my knowledge.

20 20 Q Has Cole Kepro shown the insurance company
21 21 the exhibit that you and I were just looking at,
22 22 Exhibit 4, which is the motion to approve the
23 23 transaction?

24 24 A I do not know.

25 25 Q Has Cole Kepro discussed with the insurance

26 Page 73:

27 1 company, either verbally or in writing, the proposed
28 2 terms of the deal that you and I talked about a few

1 3 moments ago?

2 4 A I do not know. This has been handled by the

3 5 attorneys at Taft.

4 17 Q So it's clearly more than a matter of just

5 18 simply filing the claim correctly; right?

6 19 A I don't think so. I believe it's a matter

7 20 of getting the acknowledgement from the debtor that

8 21 there is not an issue, and my understanding is the

9 22 timeline is 15 days for resolution and 30 days for

10 23 payment.

11 24 Q But you're providing that opinion without

12 25 knowing whether or not the insurance company knows

13 Page 74:

14 1 about the terms of your deal; right?

15 3 A I can't -- I don't know that.

16 4 Q Meaning -- right. You don't know whether

17 5 the insurance company knows that the -- that through

18 6 paying money to the debtor that the debtor is going to

19 7 agree to not fight Cash Cloud's claim; right?

20 12 THE WITNESS: I have no idea. Like

21 13 I -- like I stated before, I've had no correspondence

22 14 with respect to any of this.

23 16 Q And if your -- I don't want to know what you

24 17 have -- you know, the meat of any conversations you

25 18 had with your attorneys. But if your attorneys were

26 19 communicating with a third party on your behalf, that

27 20 communication's not privileged.

28 21 And so I'm trying to find out -- you're the

1 22 CEO of Cole Kepro. If they're out there,
2 23 communicating on your behalf, you're telling me right
3 24 now that they may or may not have given this
4 25 information to the insurance company? You just don't

5 Page 75:

6 1 know?

7 2 A That's correct.

8 5 Q Okay. Has anyone told you that there is a
9 6 possibility that the insurance company will not pay
10 7 out on this claim?

11 8 A No.

12 9 Q What do you understand the current status of
13 10 the claim to be?

14 11 A Waiting for resolution on the defective
15 12 portion, which is addressed in the settlement
16 13 agreement where the debtor says that there is not, has
17 14 not, and will never be a defect.

18 19 Q I can ask it a slightly different way if --

19 20 A Well, I'll -- I'll -- the document, which I
20 21 just read, I read for the first time when it was put
21 22 on Stretto, when it was provided as a settlement
22 23 document for the Court, and I read it at that point.

23 24 And I can live with that.

24 Page 76:

25 10 Q Okay. And you're aware that the statement
26 11 that you are pointing out to me a couple of times in
27 12 an unapproved settlement agreement, that the only way
28 13 according to that proposed settlement agreement that

1 14 the debtor makes the acknowledgment that you're

2 15 pointing to is if the other parts of the deal happen;

3 16 right?

4 17 A I'm aware that with the settlement

5 18 agreement –

6 20 that many different

7 21 things have to come into play.

8 23 Q It's not your testimony that the debtor has

9 24 told Cole Kepro that the debtor is going to simply

10 25 allow the claim; right?

11 Page 77:

12 1 A You and I read the same document.

13 2 Q True. So I'm making sure that you're not

14 3 extrapolating from that and telling me that even if

15 4 this agreement weren't approved, Cole Kepro was simply

16 5 going to -- I'm sorry, Cash Cloud was simply going to

17 6 allow Cole Kepro's unsecured claim.

18 7 A I don't know what they're going to do.

19 15 Q And there have been no communications

20 16 contrary to this document –

21 19 Q -- from the debtor to Cole Kepro; fair?

22 20 A There have been lots of correspondence from

23 21 the debtor to Cole Kepro.

24 Page 78:

25 3 Q Are you aware of any valuation of Debtor's

26 4 claims against Cole Kepro?

27 7 A I am not.

28 8 Q Are you aware of any analysis of Mr.

1 9 McAlary's offer to purchase the litigation against

2 10 Cole Kepro?

3 11 A I am not.

4 12 Q Are you aware of any analysis that the

5 13 committee did of Cole Kepro's offer to purchase the

6 14 claims against Cole Kepro?

7 15 A I am not.

8 24 Q When potential purchasers were considering

9 25 buying the claims that the debtor had against

10 Page 79:

11 1 Cole -- has against Cole Kepro, did any potential

12 2 bidder reach out to Cole Kepro to get Cole Kepro's

13 3 position on the claims?

14 4 A Justin, let me be clear.

15 5 MR. LOW: Objection.

16 6 THE WITNESS: I was not aware that

17 7 there were other people looking to buy the claims.

18 19 Q Okay. Did FTI ever discuss with Cole Kepro

19 20 anything about the claims that the debtor has against

20 21 Cole Kepro?

21 22 A No. I've had no discussions with FTI

22 23 about -- about the claim.

23 Page 80:

24 19 First, let me circle back and make sure I

25 20 understood your testimony so far, which is you reached

26 21 out to Tanner James to indicate interest in resolving

27 22 the matter; is that accurate?

28 23 A That is correct.

1 24 Q Okay. How did you get from that initial
2 25 outreach to Exhibit 4? I want to understand how the

3 Page 81:

4 1 sausage was ultimately made.
5 6 Very -- very straightforward. Reached out
6 7 in the morning, had a meeting early that afternoon
7 8 where I went to the Province facilities, explained
8 9 that I was interested in getting this resolved, did a
9 10 conversation between the two -- the principal of
10 11 Province, Dan Moses, and Tanner, who was the lead,
11 12 along with my private equity partner, Cory Gaffney.
12 13 We talked about what I was looking to
13 14 accomplish, which was a resolution so that we could
14 15 all move on, and agreed to put my attorney, utilizing
15 16 Province as the intermediary and bringing in the
16 17 Unsecured Creditors' Committee.
17 18 At that point, I handed off all negotiations
18 19 to the attorneys at Taft, working through Province and
19 20 the Unsecured Creditors' Committee. And while I knew
20 21 that there were discussions going on, I stayed
21 22 outlooking. And when I read Exhibit 4, it was the
22 23 first time that I saw financial terms or anything
23 24 else.

24 Page 82:

25 1 Your initial email to Tanner James I believe you said
26 2 was in April -- no, actually, I don't remember when
27 3 you said it was. Was it June 23?
28 4 A It was late -- it was late June. I -- I was

1 5 going to say -- I don't have a calendar in front of
2 6 me. June 20-something. I'd say probably 28. It was
3 7 close to the 4th of July weekend

4 9 Q And did -- you went over to Province's
5 10 office that same day?

6 11 A Correct.

7 12 Q Did you and Province discuss any terms that
8 13 day?

9 14 A No.

10 15 Q So who first proposed the terms that are in
11 16 Exhibit 4?

12 17 A I have no idea.

13 18 Q So prior to reading Exhibit 4 -- and I'm not
14 19 talking about today, the first time you read it.

15 20 Prior to reading it, were you aware of the figure
16 21 \$850,000?

17 22 A My testimony before, absolutely not. I had
18 23 no idea the economic -- I had no idea on the
19 24 economics. I wasn't involved. I left that to the
20 25 attorneys and the -- and the committee professionals

21 Page 83:

22 1 and the debtor to work out.

23 2 Q Were you -- before you read Exhibit 4 the
24 3 first time, were you aware of the interplay between
25 4 the insurance proceeds and the payment proposed in
26 5 Exhibit 4 from Cole Kepro to Cash Cloud?

27 6 A No.

28 7 Q No?

1 8 A I'll say it again. I read that for the
2 9 first time. I did not know about promissory notes,
3 10 did not know about any of the terms, none.
4 14 You weren't aware of any of the terms of how
5 15 the dispute between Cole Kepro and Cash Cloud would be
6 16 resolved or how Cole Kepro would end up owning the
7 17 claims that Cash Cloud has against Cole Kepro prior to
8 18 looking at Exhibit 4?

9 19 A Correct.

10 22 Q Do you know if any term sheets were passed
11 23 back and forth between Cole Kepro and the debtor,
12 24 including Province, or the committee?

13 25 A No, I have no idea.

14 Page 84:

15 18 I handed over the negotiations
16 19 to my attorneys to negotiate on my behalf, and when
17 20 I -- what I wanted or didn't want is immaterial. I
18 21 did not see a term sheet. I did not have any
19 22 discussions with anyone until I read that document.

20 Page 85:

21 3 But in Exhibit 1, in the topics for
22 4 examination, I subpoenaed a representative of Cole
23 5 Kepro who could testify about your communications,
24 6 Cole Kepro's communications, with the debtor or
25 7 committee regarding Cole Kepro's offers; right? And
26 8 that's not you; right?

27 10 I did not see that subpoena until I looked
28 11 at it this morning. I did not know about the

1 12 existence of this deposition until yesterday.

2 14 So I'm here to tell you that I can't speak

3 15 to the goings-on on the committee, because I recused

4 16 myself. I can tell you that I reached out to Tanner

5 17 James to get it moving, what I've testified to.

6 Page 86:

7 2 I just want to know who on Cole Kepro's side

8 3 I can talk to about those communications. So is that

9 4 actually Cole Kepro's attorneys?

10 5 A Cole Kepro's attorneys

11 6 represent -- negotiated on behalf of the company.

12 7 Q Okay. So who is it at Taft that would be

13 8 the right witness to get that information from?

14 10 I -- I would assume it would be, you know,

15 11 Andrew Matott from Seward & Kissel. It would be Lee

16 12 Kellett [ph]. It would be Bernadette Dennehy, my

17 13 general counsel. I -- I don't know. I don't know who

18 14 did the -- I can't speak to that. I can speak to the

19 15 document I read, which I'm comfortable with.

20 Page 87:

21 3 You mentioned Cory Gaffney earlier as far as

22 4 someone who went over to Province's office in late

23 5 June 2023. What was his involvement in the

24 6 negotiations of the proposed transaction?

25 7 A You -- you misunderstood. Cory Gaffney was

26 8 on the phone. Cory Gaffney is based on the East

27 9 Coast, and he was involved in flaming the desire for

28 10 a -- a resolution, working with them.

1 11 Q Did he -- after June 2023, did Mr. Gaffney
2 12 communicate with the debtor, including Province, or
3 13 the committee regarding proposed terms for this
4 14 proposed transaction?

5 15 A I do not know that.

6 16 Q Does he have a formal role within Cole
7 17 Kepro, or is he at the Anderson level?

8 18 A He is the managing principal of the private
9 19 equity company. He's on the board of directors of
10 20 Cole.

11 Page 88:

12 11 Q Okay. Earlier today, I was asking you about
13 12 other bidders for Cash Cloud assets, and I want to
14 13 mention a couple to find out who on Cole Kepro's
15 14 behalf did any communicating with the debtor or the
16 15 committee or the bidders about proposed transactions.
17 16 One of them is Forest Road. Who on Cole
18 17 Kepro's behalf participated in evaluating Forest
19 18 Road's proposed transaction?

20 20 I can say that -- I don't know. It wasn't
21 21 me.

22 Page 89:

23 13 A I don't know that -- I don't know that
24 14 anyone from that company contacted anyone here. I was
25 15 not aware of it.
26 17 Forest
27 18 Road was a proposed plan sponsor. You're aware of
28 19 that; right?

1 20 A I am.

2 Page 90:

3 21 Q I'm asking if you participated on behalf of

4 22 Cole Kepro with the committee pertaining to the

5 23 proposed transaction by Forest Road.

6 Page 91:

7 2 THE WITNESS: No.

8 4 Q Okay. Do you know who on Cole Kepro's

9 5 behalf participated pertaining to Forest Road?

10 6 A No.

11 7 Q Do you know if anyone on Cole Kepro's behalf

12 8 participated with the committee as it pertains to –

13 10 A No.

14 11 Q I'm going to ask that same last series of

15 12 questions regarding Owl Creek as well. Did --

16 13 A No, no, and no.

17 Respectfully submitted this 18th day of November 2023.

18 **CARLYON CICA CHTD.**

19 */s/ Candace Carlyon*
20 CANDACE C. CARLYON, ESQ.
21 Nevada Bar No. 2666
22 DAWN M. CICA, ESQ.
Nevada Bar No. 4565
Counsel for Chris McAlary

23 **and**

24 **DIAMOND MCCARTHY LLP**
25 Allan B. Diamond, Esq.
(pro hac vice admitted)
26 Justin Strother, Esq.
(pro hac vice admitted)
27 Christopher D. Johnson, Esq.
(pro hac vice admitted)
28 *Co-Counsel for Chris McAlary*

CERTIFICATE OF SERVICE

I am an employee of Carlyon Cica Chtd. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

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/s/ Candace Carlyon

An employee of Carlyon Cica Chtd.

EXHIBIT 1

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

In re:	Case No.
CASH CLOUD, INC., d/b/a COIN	BK-23-10423-
CLOUD,	MKN
Debtor.	Chapter 11

VIDEOCONFERENCE DEPOSITION OF CORPORATE REPRESENTATIVE
FOR COLE KEPRO INTERNATIONAL, LLC - FRED COOK

DATE: Tuesday, November 7, 2023

TIME: 11:09 a.m. PST/1:09 p.m. CST

LOCATION: Remote Proceeding

4170 Distribution Circle

North Las Vegas, NV 89030

REPORTED BY: Becky Stewart

JOB NO.: 6298296

A P P E A R A N C E S

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18

19 ALSO PRESENT:

20 Alexandra Ogden, Veritext (by videoconference)

21 Chris McAlary, CEO and Founder at Coin Cloud (by
22 videoconference)

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I N D E X

EXAMINATION:	PAGE
By Mr. Strother	8

E X H I B I T S

NO.	DESCRIPTION	PAGE
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Exhibit 2	Complaint Against Cole Kepro	46
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P R O C E E D I N G S

THE REPORTER: Good afternoon. My name is Becky Stewart, a reporter assigned by Veritext to take the record of this proceeding. We are now on the record at 1:09 p.m.

This is the deposition of Fred Cook taken in the matter of Cash Cloud, Inc., d/b/a Coin Cloud on Tuesday, November the 7th, 2023. The reporter is located in Cherokee, Texas, and the witness is located in Las Vegas, Nevada.

I'm a notary authorized to take acknowledgments and administer oaths in Texas. Parties agree that I will swear in the witness remotely.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording of this proceeding:

- is intended for uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographic means; and
- shall constitute written stipulation

1 of such.

2 At this time will everyone in
3 attendance please identify themselves for the record,
4 beginning with the noticing attorney.

5 MR. STROTHER: Good afternoon. My name
6 is Justin Strother, and I am here -- I'm the noticing
7 attorney, and I'm here for my client, Chris McAlary.

8 We also have a few other attorneys that
9 I'll go ahead and introduce that are personal counsel
10 for Mr. McAlary. Dawn Cica, AJ Kung, and Natasha
11 Sharma are also here.

12 Oh, and by the way, my client, Chris
13 McAlary, is also here.

14 MR. LOW: All right. Benjamin Low for
15 Cole Kepro International, and I'm joined by my client,
16 Fred Cook, who was -- who is going to be deposed.

17 MR. COOK: And I'm Fred Cook, and I
18 only speak up because I am in North Las Vegas, Nevada,
19 North, not Las Vegas, Nevada, Becky. It's a different
20 town.

21 THE REPORTER: Okay.

22 MR. MANN: Daniel Mann with Fox
23 Rothschild. I'm just here to observe with -- on
24 behalf of the debtor, Coin Cloud.

25 MR. MATOTT: And you've got Andrew

1 Matott of Seward & Kissel LLP, on behalf of the
2 Official Committee of Unsecured Creditors.

3 THE REPORTER: Okay. Is that
4 everybody?

5 MR. BACK: This is Adam Back with Stoll
6 Keenon Ogden. I'm observing on behalf of Fifth Third
7 Bank.

8 THE REPORTER: Perfect. Thank you.
9 Hearing no objections, I will now swear in the
10 witness.

11 Mr. Cook, could you please raise your
12 right hand?

13 WHEREUPON,

14 FRED COOK,
15 called as a witness and having been first duly sworn
16 to tell the truth, the whole truth, and nothing but
17 the truth, was examined and testified as follows:

18 THE REPORTER: Thank you so very much.

19 We're ready to begin.

20 EXAMINATION

21 BY MR. STROTHER:

22 Q Mr. Cook, would you please identify yourself
23 for the record?

24 A I am Frederick Albert Cook, Junior. I am
25 the chief executive officer of Cole Kepro

1 International, LLC. I am also the co-chairman of the
2 Unsecured Creditors' Committee involved in the Coin
3 Cloud bankruptcy.

4 Q Thank you. A couple of other questions to
5 identify you fully. Would you please give your date
6 of birth?

7 A

8 Q And what is your --

9 THE REPORTER: I'm sorry. He broke up.

10 BY MR. STROTHER:

11 Q Would you say your birthday again, please?

12 A

13 Q Thank you. And what is your current
14 residential address?

15 A

17 Q Thank you, sir. My name's Justin Strother,
18 and as you heard a few moments ago, I'm an attorney
19 that represents Chris McAlary regarding the bankruptcy
20 filing of Cash Cloud, d/b/a Coin Cloud.

21 How are you today?

22 A Living the dream.

23 Q Then you're two steps ahead of me, so you'll
24 have to give me some insight on what those next two
25 steps are. You don't have to do that under oath.

1 When you introduced yourself, you used the
2 name Coin Cloud, which prompts me to go through some
3 vocabulary, if you will, before we begin, to make sure
4 that we both know who we're referring to when we use
5 various names.

6 First, I'm familiar with the name Coin
7 Cloud. Is it okay with you if I call that entity Cash
8 Cloud?

9 Mr. Cook, you've frozen. Is --

10 THE REPORTER: He's frozen.

11 MR. STROTHER: Okay. Didn't know if it
12 was me. Why don't we go off the record a moment?

13 THE REPORTER: We'll be off the record
14 at 1:14.

15 (Off the record.)

16 THE REPORTER: We'll be --

17 THE WITNESS: I -- I lost you when you
18 were talking about Coin Cloud versus Cash Cloud versus
19 getting some definitions or --

20 THE REPORTER: Okay. Let me get back
21 on the record at 1:16; okay?

22 THE WITNESS: Yep.

23 MR. STROTHER: Thank you.

24 BY MR. STROTHER:

25 Q Yes, right before the technical

1 difficulties, you and I were about to go through some
2 vocabulary.

3 My first question is, is it okay with you if
4 I refer to the entity you called Coin Cloud as Cash
5 Cloud?

6 A That's fine.

7 Q And will you know that I'm referring to Cash
8 Cloud or Coin Cloud if I use the phrase "debtor" or
9 "the debtor"?

10 A You -- yes.

11 Q Okay. Might as well get a couple of other
12 ones out of the way. You referred to the company that
13 you're here on behalf of as Cole Kepro International,
14 LLC. Is it okay if I refer to that entity as either
15 Cole Kepro or CKI?

16 A It is.

17 Q Okay. I'm sure there are going to be more
18 of those that we'll have to go through. As I detect
19 them, I'll bring them to your attention and make sure
20 we both know who we're talking about.

21 A But if there's -- and if there's something I
22 don't understand, I'll ask you a question.

23 Q Wonderful. Have you given a deposition
24 before?

25 A I have.

1 Q Great. Then you've already crossed one of
2 the normal things I would ask a witness to do off my
3 list.

4 The thing I think is probably most
5 important -- the two things are, number one, I need to
6 make sure that you understand that you are giving
7 sworn testimony today and that the court reporter is
8 typing down all of your answers and all of my
9 questions. Do you understand that?

10 A I do.

11 Q Okay. The other thing is I guess just to
12 make sure that you answer out loud and with words,
13 rather than auditory -- audible gestures, like
14 "uh-huh," so that our court reporter can accurately
15 type down what it is you're saying.

16 A I will use "yes" and "no" and articulate my
17 responses.

18 Q Wonderful. So how many times have you given
19 a deposition?

20 A I'd say more than five and less than twenty.

21 Q Okay. Have you given any depositions
22 regarding Cash Cloud?

23 A No.

24 Q When is the last time you gave a deposition?

25 A Fifteen years ago.

1 Q Okay. Were those depositions regarding Cole
2 Kepro?

3 A No.

4 Q Okay. What did you do to prepare for
5 today's deposition?

6 A Went and checked the Zoom link to make sure
7 that I could get it working and spent a few minutes
8 this morning with my attorney, and he explained to
9 me --

10 MR. LOW: Let's not get into that,
11 Fred.

12 THE WITNESS: Okay.

13 I spoke to my attorney this morning.

14 BY MR. STROTHER:

15 Q Have you spoken to anyone that is not your
16 attorney about giving your deposition here today?

17 A No.

18 Q And to make sure, you do have counsel
19 present today that will be here to assist you in any
20 way that is permitted during the deposition process
21 today?

22 A That's my understanding.

23 Q Okay. I do want to have you look at the
24 subpoena for the deposition today, and I'd like to ask
25 you a couple questions about that. Could you see if

1 you can look at Exhibit 1?

2 (Exhibit 1 was marked for
3 identification.)

4 A I'm loading the notes, and I don't see it
5 there. I'd find it in Chat?

6 Q No. This would be in the Veritext Exhibit
7 Share.

8 A Now -- I'm in Chat, and now I'm getting into
9 the Exhibit Share.

10 Q Got it.

11 MR. LOW: Yeah, that's empty for me.

12 THE WITNESS: My folder's empty.

13 MR. STROTHER: Let's not go off the
14 record yet, because there may be one quick fix. But
15 if it doesn't work, let's go off the record.

16 Do you see a folder marked -- or called
17 Marked Exhibits?

18 THE WITNESS: I do not.

19 MR. STROTHER: Why don't we go off the
20 record real fast?

21 THE REPORTER: We will be off the
22 record at 1:21.

23 (Off the record.)

24 THE REPORTER: We are now back on the
25 record at 1:26.

1 BY MR. STROTHER:

2 Q Mr. Cook, before you on your personal device
3 should be Exhibit Number 1. Do you see that?

4 A It is saying, "Generating file preview. May
5 take a while."

6 Q Understood.

7 A There it is. I see it.

8 Q Great. Exhibit Number 1 is the subpoena for
9 today's deposition. Have you seen this document
10 before?

11 A I have not.

12 Q Okay. Would you please go to page 16, which
13 is the last page of Exhibit 1?

14 A Okay.

15 Q Page 16 lists the topics for today's
16 deposition. I'd like to just go through each one of
17 these and make sure that you're prepared to testify
18 about each.

19 I'm going to read the first one, but I don't
20 think that you'll be able to answer questions about
21 that one, because no documents have been produced and
22 may be not collected yet.

23 So number one is "any document or
24 communication responsive to any request, whether or
25 not produced." I'll ask are you prepared to testify

1 about that today?

2 A You're talking about number one?

3 Q Yes, sir.

4 A I am.

5 Q Okay. When you see a capitalized term in
6 Exhibit Number 1 on page 16, generally, that would
7 have a definition on a prior page. So if you would
8 like me to go back and consult any of the definitions,
9 if that would help you answer the question, all you
10 need to do is let me know; okay?

11 A I'd like you to define capital Y-O-U, "You."

12 Q Is it defined? Let me see.

13 If you'll go to page 9, the definition of
14 "You" or "Your" -- this is at number 21 -- is "You or
15 Your means the person or entity to which these
16 requests are directed." Do you understand?

17 A I guess my question is does that mean my
18 attorneys?

19 Q Hmm. You know, that may be a question for
20 your attorney. My position is that when referring to
21 an entity that "You" or "Your" refers to that entity's
22 agents as well, which would include attorneys.

23 However, I would necessarily concede that
24 there are a couple of things that can be
25 privileged -- could be privileged, which would include

1 attorney-client communications and would also include
2 attorney work product.

3 However, maybe what you're -- if your
4 attorneys were communicating, for example, on Cole
5 Kepro's behalf, do you need to talk about that? My
6 position would be if it's not a privileged
7 communication, the answer is yes.

8 A I can speak to what I've done with respect
9 to communication between me and the debtor or its
10 agents.

11 Q Okay. Well, we might have to cross this
12 bridge whenever we get to it in context and see if
13 that ends up being a problem or not. I will introduce
14 the -- my perception of the potential problem in this
15 way, and I don't know the answer to these questions
16 yet.

17 If the topics for examination -- if the
18 activities that are considered in those topics were
19 actually conducted by Cole Kepro's attorneys and
20 you're not able to testify about it, that may make
21 this a short deposition, but it may mean that there's
22 something else that needs to be done.

23 I'll give you an example. If, you know, one
24 of the topics for -- and we're -- we'll get there.
25 One of the topics for this examination are the

1 communications regarding any negotiations between Cole
2 Kepro and the debtor or the committee regarding Cole
3 Kepro's proposed purchase of the litigation that Cash
4 Cloud has against Cole Kepro.

5 If those communications were done at the
6 attorney level, well, they wouldn't be privileged, and
7 we want to know about them. But if you're not the
8 person to talk about them, we need to figure out who
9 is.

10 Do you have any questions about what I just
11 said? There's not -- there wasn't actually a question
12 on the table.

13 A I do not. I do not have any questions.

14 Q Okay. Okay. Well, why don't we move to the
15 second topic for examination?

16 Are you prepared to discuss or to testify
17 about Topic Number 2, which is "the debtor's or
18 committee's valuation of estate claims against Cole
19 Kepro"?

20 A You're on page 16, and you're reading
21 something different than what I'm seeing. Number one
22 was "all communications between you and the debtor or
23 its agents regarding the corporate advantage policy."

24 Number two is "all communications between
25 you and the committee or its agents regarding the

1 corporate advantage policy issued by Euler Hermes
2 North America Company." Are we in the same place?

3 Q I may be looking at the wrong document for
4 the -- yeah, we are in the same place. You're reading
5 something different.

6 A Yeah. The -- the subpoena I have is not
7 what you're reading to me.

8 Q So maybe --

9 A I'm on page 14 of 16 --

10 Q No -- my apologies. I want you to be on
11 page 16.

12 A Okay. Page 16?

13 Q Yes.

14 A There's -- okay, which is Exhibit 2.

15 Q Right. This is where I thought we were
16 starting.

17 A Yep. Sorry.

18 Q So let's make sure we're all on the same
19 page, literally. Are you looking at page 16, titled
20 "Topics for Examination"?

21 A I am. Okay.

22 Q And you see that there are ten topics listed
23 here?

24 A I do.

25 Q Okay. Let me make sure -- I'm going to back

1 up to Topic Number 1.

2 A Yep.

3 Q And then we'll go through these.

4 The first topic listed is "any document or
5 communication responsive to any request, whether or
6 not produced." I believe you answered this earlier,
7 but just to confirm, you are prepared to testify about
8 that today?

9 A I am.

10 Q Okay. The second topic is "the debtor's or
11 committee's valuation of estate claims against Cole
12 Kepro." Are you prepared to testify about that here
13 today?

14 A I am.

15 MR. MATOTT: And Andrew Matott for the
16 committee. I just want to note an objection here and
17 with a few of these topics that we'll get to later is
18 that to the extent he's here in his personal capacity
19 and has knowledge, he can discuss that.

20 This is not a deposition of the
21 committee's representative, so when we talk about
22 committee valuation, I would object to that being
23 privileged and not provided for under the topics for
24 today's event.

25 MR. STROTHER: Okay. The first thing I

1 would say is under Rule 30, while the topics
2 are -- the topics to a subpoena are there so that the
3 entity being deposed can identify the correct person
4 to give testimony and prepare that person for the
5 testimony, there's a long series of cases that makes
6 it clear that that doesn't actually define the scope
7 of the deposition.

8 If the witness has knowledge, the
9 witness is required to answer the questions.

10 The question about privilege, I guess
11 that's different, and we'll just have to cross that
12 bridge whenever there's a question that, Andrew, you
13 think is violating a privilege or that an answer would
14 violate some privilege.

15 MR. MATOTT: Right, and I would just
16 follow up to note that Fred is not here today as a
17 committee member. He is not testifying on behalf of
18 the committee. That's going to be on Friday with the
19 committee's 30(b)(6).

20 MR. STROTHER: Understood. Understood,
21 and I --

22 THE WITNESS: Justin, I -- I will say
23 that I have recused myself from any and all
24 correspondence and communications with respect to
25 claims against Cole Kepro.

1 I have had no communications, and I
2 will testify that I have -- I was not involved. I
3 have no knowledge of, have had no on-the-record, no
4 off-the-record correspondence with members of the
5 committee and have provided no influence or comment
6 with respect to the insurance policy that's here
7 today.

8 And you were alluding to a quick
9 deposition. We'll see if it's quick, but I've had no
10 correspondence, communications, anything with respect
11 to what we're talking about this morning -- or this --
12 BY MR. STROTHER:

13 Q Okay. Thank you for that. Might be a quick
14 deposition. We'll see. You know, my intention today
15 is to get your truthful testimony, and if your
16 truthful testimony ends up being "I prepared for this,
17 and there's no -- nothing to tell you," then we'll
18 move on our merry way; right?

19 But I do intend to explore both of those
20 areas that you just talked about, Cole Kepro's -- that
21 would be your -- position on the committee as it
22 pertains to Cash Cloud's claims against Cole Kepro and
23 Cole Kepro's offer to purchase those claims and, of
24 course, the insurance policy and claims against that
25 insurance policy that are referenced later on in these

1 topics.

2 I propose we continue through these, just to
3 identify the topics and make sure you're the one
4 that's prepared to testify about them, and then we'll
5 see what, if anything, you have to say about them;
6 okay?

7 A Very good.

8 Q Okay. We just did number two. Let's find
9 out about number three. Are you prepared to testify
10 about the third topic, which is "the debtor's or
11 committee's analysis and consideration of the offers
12 of McAlary to purchase the Cole Kepro claims"?

13 MR. MATOTT: Same objection.

14 MR. STROTHER: Understood.

15 THE WITNESS: I'm prepared to answer
16 when asked.

17 BY MR. STROTHER:

18 Q Thank you.

19 The fifth topic is "the debtor's or
20 committee's communications with you regarding Cole
21 Kepro's offers to purchase, settle, or otherwise
22 compromise the Cole Kepro claims." Are you prepared
23 to --

24 MR. MATOTT: Same objection.

25 //

1 BY MR. STROTHER:

2 Q Sorry. Are you prepared to testify about
3 Topic Number 5?

4 MR. MATOTT: Same objection for the
5 committee there.

6 A And I'll give -- I'm prepared -- I'm
7 prepared to answer any question provided to me, and
8 you skipped number four.

9 Q Thank you for that. That was unintentional.
10 Let's cover number four. The fourth topic is "the
11 debtor's or committee's communications with any party
12 regarding McAlary's offers to purchase the Cole Kepro
13 claims." Are you prepared to testify about that topic
14 today?

15 MR. MATOTT: Same objection, and the
16 record can reflect that we actually don't have an
17 objection to Topic Number 5, just 4.

18 MR. STROTHER: Thank you.

19 THE WITNESS: And I'm prepared to speak
20 to that.

21 BY MR. STROTHER:

22 Q Now let's go to Topic Number 6, which is --

23 A And -- and just for clarification, Topic
24 Number 5 is with "you," a small Y. I assume that's me
25 personally.

1 Q Well, "you" would be Cole Kepro. "You" here
2 was the subpoenaed witness, which is Cole Kepro.

3 A Okay. Okay.

4 Q So are you still prepared to talk about
5 Topic Number 5?

6 A I am. I am.

7 Q Okay. Topic Number 6 is "the debtor's or
8 committee's analysis and consideration of the offers
9 of Cole Kepro to purchase, settle, or otherwise
10 compromise the Cole Kepro claims." Are you prepared
11 to testify about Topic Number 6?

12 MR. MATOTT: Same objection.

13 A I am.

14 Q Topic Number 7 is "the debtor's or
15 committee's communications with any party regarding
16 Cole Kepro's offers to purchase, settle, or otherwise
17 compromise the Cole Kepro claims." Are you prepared
18 to testify about Topic 7?

19 MR. MATOTT: Same objection.

20 A I am.

21 Q The final three topics pertain to the
22 insurance policy that we were talking about.

23 Topic Number 8 is "your communications with
24 any party regarding Corporate Advantage Policy Policy
25 Number 5129818, issued by Euler Hermes North American

1 Insurance Company." Are you prepared to talk -- to
2 testify about Topic Number 8 today?

3 A I'll defer to my attorneys. My
4 communications have been with attorneys.

5 Q Okay. Well, why don't we talk about that
6 right now, to the extent we can? My intent today is
7 to try to identify through you whether Cole Kepro has
8 communicated with anyone regarding that particular
9 insurance policy.

10 Let me start by asking -- and I think you
11 testified about this earlier. You personally have not
12 talked with anyone, communicated with anyone about
13 that policy; is that accurate?

14 A Other than my insurance professionals and
15 legal professionals.

16 Q Okay. I might -- I will ask you about your
17 communications with those insurance professionals.
18 But are you aware -- and I won't ask you about your
19 communications with Cole Kepro's attorneys.

20 MR. LOW: Thanks, Justin.

21 BY MR. STROTHER:

22 Q But are you aware of your -- Cole Kepro's
23 attorneys communicating with other parties about the
24 insurance policy?

25 A I am not aware of the particulars. I am not

1 aware of my attorneys discussing the insurance policy
2 with anyone.

3 Q Okay. Let me ask a slightly different
4 question. Are you aware of anyone other than you, Mr.
5 Cook, on Cole Kepro's behalf communicating with any
6 other party about Cole Kepro's insurance policy?

7 A I know that we have disclosed the existence
8 of the insurance policy, but the particulars, I'm not
9 aware of any -- anyone other than my attorneys.

10 Q So I think what I'm going to do with this
11 topic is address it in due -- address it in your
12 deposition later. I have an outline I'll be going
13 through and asking questions.

14 A Yep.

15 Q But on the question of whether you're the
16 one who should be testifying about this, I have the
17 following question. Are you aware of anyone other
18 than you who could testify about Cole Kepro's
19 communications with other parties about the insurance
20 policy?

21 A I believe that would be the attorneys at
22 Taft.

23 Q Okay. Okay. Well, let me move on to number
24 nine and ten, and if your answers are the same there,
25 understood. But they may be different.

1 Topic Number 9 is "the status of any claim
2 or potential claim pertaining to Cash Cloud as to
3 Corporate Advantage Policy Policy Number 5129818
4 issued by Euler Hermes North American Insurance
5 Company." Are you prepared to testify about Topic
6 Number 9?

7 A Very similar to the way I talked about
8 number eight in that that is being handled by
9 attorneys.

10 Q Okay. The topic is the status of Cole
11 Kepro's claim.

12 A Correct.

13 Q Are you prepared to testify about the
14 current status of Cole Kepro's claim?

15 A I would defer to my attorneys.

16 Q Okay.

17 A I am not. I have not had any -- I have not
18 had any discussion on the status.

19 Q Okay. Okay. I'm going to leave that on my
20 outline and see if you have answers to questions that
21 I might ask about it when we get there.

22 By the way, I have been pronouncing the
23 insurance company's -- the word -- the second word in
24 the insurance company's name as Hermes, like the
25 fashion house. I don't know if that's correct. If

1 you pronounce it differently and want me to pronounce
2 it differently, would you please let me know?

3 A It's changed from Euler Hermes to -- it was
4 purchased by another company. I can't --

5 Q Alliance?

6 A Alliance.

7 Q I'm going to continue to use Euler Hermes
8 for now, because it's what's written here.

9 A Yep. That's fine.

10 Q Okay.

11 A We're talking about the same entity, and I
12 don't care how you pronounce it.

13 Q Thank you. I may start calling it "the
14 insurer" when we get to the actual questions. If I do
15 that, would that be okay with you?

16 A That would be fine. I'll know who you're
17 talking about.

18 Q All right.

19 Topic Number 10 is "the process by which
20 Euler Hermes North American Insurance Company will
21 determine whether a claim pertaining to Cash Cloud
22 made against Corporate Advantage Policy Policy Number
23 5129818, issued by Euler Hermes North American
24 Insurance Company, would be paid or not."

25 Are you prepared to testify about Topic

1 Number 10?

2 A I am.

3 Q Okay. Okay. Now that that's out of the
4 way, let's do some more slow stuff. Let me ask you
5 about your general background, Mr. Cook.

6 A Sure.

7 Q You began by saying you are the CEO of Cole
8 Kepro. How long have you held that position?

9 A Twelve years.

10 Q How long has Cole Kepro existed, if you
11 know?

12 A Approximately 30 years.

13 Q How did you rise to the position of CEO or
14 take the position of CEO?

15 A Along with a private equity group, the
16 Anderson Group, which I was an investor, we purchased
17 the assets of Cole Kepro in 2011 and took over the
18 company. I'm an operationally-focused executive. I
19 had worked with the Anderson Group before on other
20 entities, and I located to Nevada to run the company.

21 Q What did you do for a living prior to being
22 the CEO of Cole Kepro?

23 A I was the chairman and chief executive
24 officer of Hastings Manufacturing Company, which is a
25 piston ring company, a holding of the Anderson Group.

1 Q What is your -- if you can give a general
2 answer, what is your general professional experience?

3 A I am a -- I'm an engineer. I'm a
4 manufacturing-focused operational executive. I've
5 spent the last 40 years managing products, businesses,
6 with P&L responsibility. So I buy and get involved in
7 non-performing assets and turn them around.

8 I've done that for Ingersoll Rand. I've
9 done that for private companies. I've done that for
10 44 years, 45 years.

11 Q Okay. Was Cole Kepro underperforming at the
12 time you took the role of CEO?

13 A They were, only because Joe Cole, the
14 founder, was a patent -- I was going to use the
15 word -- Joe Cole had lots of patents. Joe Cole would
16 see a need in an industry, and he'd develop a patent.
17 Joe Cole sued his customers, made tens of millions of
18 dollars, and then didn't understand why they wouldn't
19 buy from him.

20 I bought the company. I would not -- I was
21 not given the opportunity to buy the patents, but I
22 bought litigation strategy. And so I settled patents
23 with the industry, with the gaming industry -- this is
24 a slot machine manufacturer company -- for a dollar,
25 and we built the company by making high-end slot

1 machines for a reasonable price.

2 So it was underperforming because their
3 business practices were such that they were alienating
4 their customer base, and we built back a nice -- a
5 nice company.

6 Q Let's move to your role on the committee in
7 the Cash Cloud bankruptcy.

8 A Sure.

9 Q And you testified a little bit about this
10 earlier, but I'd like to delve a little deeper.

11 Generally -- and this is not with regard to
12 the litigation involving Cole Kepro and Cash Cloud.
13 Generally, how does Cole Kepro participate in that
14 committee?

15 MR. MATOTT: Objection to the extent it
16 calls for any kind of committee deliberations or
17 specific communications of the committee.

18 So Fred, to the extent it does, I would
19 direct you not to answer as a committee member for
20 those.

21 THE WITNESS: Thank you, Andrew.

22 I swore an oath when I signed onto the
23 Unsecured Creditors' Committee not to talk about the
24 proceedings or -- and to work in the best interests of
25 all of the unsecured creditors. And I show up every

1 week, trying to do that, relying heavily on the -- the
2 professionals that are there.

3 When Coin Cloud went -- when Coin Cloud
4 stopped paying me, they owed me \$9.4 million. I had
5 procured close to \$20 million in single-purpose
6 inventory with respect to the kiosks, and I had close
7 to \$20 million worth of machines in a finished goods
8 capacity, above and beyond the inventory.

9 I got involved in the committee because
10 they owed me a lot of money. I wanted to see this
11 come out of bankruptcy, to succeed, and have a unique
12 understanding of what goes into these machines, how
13 they work. And I've brought my expertise as one of
14 seven members, between eight and seven members of
15 the -- of the committee.

16 But I'm not going to go into what we
17 specifically talk about or vote on, other
18 than -- other than to say that I have never been
19 involved in a Cole Kepro discussion with the insurance
20 payment or any sort of agreement. I've recused
21 myself. My attorneys have recused themselves from any
22 deliberation with respect to committee operations.

23 BY MR. STROTHER:

24 Q Objection, nonresponsive. I mean no
25 disrespect by that.

1 My question at this moment is merely just
2 how do you on behalf of Cole Kepro participate on the
3 committee, not what do you do, what have you talked
4 about, why do you do it, why are you on the committee,
5 just what does that participation generally look like?

6 A It looks like --

7 MR. MATOTT: Objection, asked and
8 answered.

9 Sorry, Fred. Just want to get the
10 objection on the record.

11 THE WITNESS: That's fine.

12 I read the filings in their entirety.
13 I ask questions to my attorneys if there's something
14 that I don't understand in preparation of a weekly
15 meeting. So I -- I put about two or three hours a
16 week in reading the filings, and I participate in the
17 weekly meetings.

18 BY MR. STROTHER:

19 Q Are the weekly meetings in person, over the
20 phone, or virtual, like you and I are doing right now?

21 A They are Zoom. They are on a Microsoft
22 Teams.

23 Q Do attorneys for each of the committee
24 members generally attend those meetings, or are they
25 just the committee members?

1 A Generally, my counsel is usually there. I
2 believe -- I -- I believe a number of other entities
3 have their general counsel as the -- the members, but
4 there is -- the committee is well-represented by
5 counsel.

6 Q Are there governing rules for the committee?

7 MR. MATOTT: Objection, relevance.

8 BY MR. STROTHER:

9 Q Mr. Cook, you can go ahead and answer.

10 A Yeah. There is -- there was a -- there was
11 a document that was written at the very beginning that
12 I've read and understood.

13 Q And are there agendas published in advance
14 of the committee meetings, or are they less formal
15 than that?

16 MR. MATOTT: Objection to the extent
17 that that would be a privileged communication.

18 Fred, I would direct you not to answer
19 about any communication.

20 MR. STROTHER: Andrew, what privilege
21 would that be?

22 MR. MATOTT: Attorney-client privilege.

23 BY MR. STROTHER:

24 Q You can go ahead and answer, Mr. Cook.

25 A On the advice of -- of the Unsecured

1 Creditors' Committee counsel, I'm not going to address
2 that.

3 Q And just to make sure you understand the
4 question, what I'm asking you is does the committee,
5 which is composed of, you said, seven or eight
6 different entities, circulate an agenda prior to the
7 meeting of the committee members? Is that the
8 question you're refusing to answer?

9 A I -- I understood -- I understood the
10 question. On the advice of counsel, and I consider
11 Andrew Matott as --

12 MR. MATOTT: Yeah. Just to follow up
13 to clarify, that wasn't what I understood your first
14 question, Justin.

15 MR. STROTHER: Ah.

16 MR. MATOTT: Whether there -- the -- an
17 agenda exists, I think Fred can testify as to that,
18 but not to the content of that agenda.

19 THE WITNESS: Okay. So yes, there was
20 an agenda -- there was -- with that clarification,
21 there was an agenda that comes before the meeting.

22 BY MR. STROTHER:

23 Q Okay. And are there typically minutes that
24 are circulated after the meetings?

25 A Not historically.

1 Q So let me ask you about the impact of the
2 Cole Kepro litigation on your involvement on the
3 committee. You've testified a few moments ago, maybe
4 more than once, about recusing yourself.

5 When was the first time that you observed
6 that there could be a problem, if you observed that
7 there could be a problem, with you serving on the
8 committee while there was existing litigation that
9 Cash Cloud had against Cole Kepro?

10 MR. MATOTT: Objection.

11 A I haven't -- I never viewed it as a -- I
12 never viewed it as a problem.

13 Q Why did you end up recusing yourself?

14 A Because it wasn't appropriate for me to
15 weigh in on something that would benefit Cole Kepro.

16 Q What does that recusal look like in
17 practice?

18 A I excuse myself from the call, and I hang up
19 the Zoom. If there are any documents that are
20 circulated amongst the committee members, I am not
21 copied on it.

22 I can speak to instances where documents are
23 circulated which do not go -- I know that there
24 were -- I'm told that there are documents that, you
25 know, do not go to me, as evidenced by the fact that

1 I've never received one.

2 Q Do Cole Kepro's attorneys receive those
3 documents?

4 A Not to my -- what I'm talking about now, not
5 to my knowledge.

6 Q Who is it that -- if anyone, that has this
7 role, formal or informal? Who is it that designates
8 activity of the committee as being something that is
9 about to get into an area that you might want to
10 recuse yourself?

11 A Well, I --

12 MR. MATOTT: Objection.

13 THE WITNESS: Okay. I'm sorry.

14 BY MR. STROTHER:

15 Q You can go ahead --

16 MR. MATOTT: -- just note my objection.

17 THE WITNESS: Okay. Very good.

18 I recuse myself in discussions with the
19 committee professionals.

20 BY MR. STROTHER:

21 Q So if an agenda is passed around that says,
22 "Today we're going to discuss Cole Kepro's offer to
23 purchase the claims against Cole Kepro," do you do
24 anything in advance to let the other committee members
25 know that you won't be participating in that?

1 A No. And let me be clear. I said earlier,
2 and I'll say it again, I've never had any discussions
3 with any of the committee members with respect to the
4 Cole Kepro litigation so that when this shows up as an
5 agenda item, it is coordinated so it's at the end of
6 our session.

7 When we get through the other agenda items,
8 I recuse myself and jump off the call. So there's no
9 correspondence with any other members about it or that
10 it's setting up or nothing. It's just a clear break.

11 Q Do you know whether the committee members
12 have had any written communications regarding the Cole
13 Kepro litigation?

14 A I do not know.

15 Q So then it's accurate to -- I understand
16 your testimony then to be that if such communications
17 exist, you've never seen them.

18 A That is correct.

19 Q What about the offer or offers by Mr.
20 McAlary to purchase the Cole Kepro litigation? Have
21 you had any involvement in communications with the
22 committee about those offers?

23 A No.

24 Q Do you recuse yourself from that topic as
25 well?

1 A That is tied into the Cole Kepro litigation,
2 and I have recused myself from -- from those
3 discussions.

4 Q As you sit here today, do you have
5 familiarity with any of Mr. McAlary's offers to
6 purchase the Cole Kepro litigation?

7 A Only from reading some of his pleadings in
8 Stretto.

9 MR. STROTHER: Okay.

10 Guys, I know that we've been on and off
11 the record a lot during the past hour, but if we could
12 take a quick five-minute break, I'd appreciate it.

13 MR. LOW: Yeah, fine.

14 THE REPORTER: -- be off the record at
15 2:12.

16 (Off the record.)

17 THE REPORTER: We are now back on the
18 record at 2:10.

19 BY MR. STROTHER:

20 Q Mr. Cook, I want to ask you some additional
21 questions about your work on the committee with regard
22 to the Cole Kepro litigation, which I understand. I
23 don't mean to suggest that you did any work with the
24 committee regarding the litigation. I understand your
25 testimony. But I'm looking to see if I fully

1 understand it.

2 Mr. Cook, when you received an agenda that
3 identified the Cole Kepro litigation as a topic, would
4 you speak to your lawyer about it? I don't want to
5 know what, if anything, you and your lawyer discussed,
6 but I would like to know if you and your lawyer spoke
7 about it.

8 A No, we did not.

9 Q Okay.

10 MR. MATOTT: Objection.

11 BY MR. STROTHER:

12 Q Okay.

13 A No.

14 Q Okay. Let me ask you some questions about
15 the Cole Kepro litigation. First of all, you're aware
16 that Cash Cloud sued Cole Kepro in Clark County state
17 court?

18 A I am aware that there is litigation.

19 Q I'm being specific, though. You're aware
20 that Cole Kepro was sued by Cash Cloud not in the
21 bankruptcy proceeding, but actually prior to, Cash
22 Cloud filed bankruptcy in state court in Clark County?

23 A I'm aware -- I'm aware that they've sued us.
24 I'm aware that we sued them for nonpayment. I'm aware
25 that there's a sue.

1 Q Okay. And to be clear, you're aware that
2 the order of those lawsuits was that Cash Cloud sued
3 Cole Kepro, then Cole Kepro sued Cash Cloud; right?

4 A I'm not aware of that.

5 Q Okay. Who within Cole Kepro was managing
6 the litigation, Cole Kepro and Cash Cloud, prior to
7 the bankruptcy?

8 MR. LOW: Objection, because it's under
9 attorney-client and work product.

10 BY MR. STROTHER:

11 Q I'm asking about who within Cole Kepro was
12 managing that litigation? I'm not asking about what
13 your attorneys were doing.

14 A That would be our general counsel.

15 Q And who is that?

16 A Bernadette Dennehy.

17 Q Would you mind spelling her last name for
18 our court reporter, please?

19 A Yes. I will make sure that I get it
20 correct. It would be Bernadette D-E-N-N-E-H-Y.

21 Q Thank you.

22 A And she's general counsel of the Anderson
23 Group.

24 Q Thank you. I'm not interested in spending
25 too much time on this topic, but does the Anderson

1 Group own all of Cole Kepro?

2 A No.

3 Q Okay. Is the Anderson Group a majority
4 owner of Cole Kepro?

5 A No.

6 Q Why is Cole Kepro's general counsel the
7 Anderson's Group's general counsel?

8 A Cole Kepro is an LLC. There are members of
9 the LLC. A number of the members are also members of
10 the Anderson Group. The members of the Anderson Group
11 that are involved own a majority of the shares in Cole
12 Kepro.

13 It is a holding of the Anderson Group. We
14 utilize Anderson Group resources for insurance,
15 litigation. There are dozens of Cole Kepro holdings.
16 There are also investors outside of the Anderson
17 Group.

18 Q Understood. Have you ever seen the
19 complaint that Cole Kepro -- strike that. Have you
20 ever seen the complaint that Cash Cloud filed against
21 Cole Kepro in Clark County?

22 A I have.

23 Q So I'm not asking you to admit the
24 allegations, so don't be confused by my questions. I
25 want to make sure you understand that the allegations

1 have been raised; okay?

2 So you're aware from your review of the
3 complaint that Cash Cloud is alleging that the kiosks
4 purchased from Cash -- from Cole Kepro were defective?

5 A I categorically deny it. I think it's
6 complete and utter bullshit, fabrication, and
7 I'm -- I -- I -- I'm aware of the -- I'm aware of the
8 complaint. However, I haven't had it verified by any
9 technical people, engineering people, have not seen
10 the complaint, have not seen it in the field.

11 I'm aware of the allegation.

12 Q Mr. Cook, I have to object to the
13 nonresponsive portions of your answer, other than the
14 fact that you are aware of the complaint.

15 So you're aware that Cash Cloud is alleging
16 that Cole Kepro has breached the contract between the
17 two parties; right?

18 MR. LOW: I'm going to just object to
19 this line of questioning right now as just relevance.

20 But go ahead, Fred.

21 THE WITNESS: Would you ask your
22 question again?

23 BY MR. STROTHER:

24 Q Sure. You're aware that Cash Cloud has sued
25 Cole Kepro for breach of contract?

1 A I'm not sure what they've alleged. They've
2 said that the products didn't work, and there
3 are -- I've never seen one that didn't. They never
4 left our facility without a signoff by our engineering
5 people and Coin Cloud's engineering people.

6 I've only seen eight machines come back from
7 the field to be reworked. Seven of them were hit with
8 sledgehammers, and I don't remember what the eighth
9 one was. But it wasn't a defect.

10 I can speak to the quality of the product
11 when it left, when it got signed off by us, when it
12 got signed off by Coin Cloud. I can't speak to what
13 happens, what software goes in, what happens after
14 they leave here.

15 And I really don't know, being honest, which
16 I always am in a deposition, as to what they're
17 alleging.

18 Q And I object to the nonresponsive portions.

19 Mr. Cook, I know it might be tempting to
20 want to comment on what the claims are or what you
21 imagine the claims might be. But my intent is to take
22 an orderly deposition and not litigate the claims
23 against Cole Kepro right now. That's not my job
24 today; right?

25 And it's not your job, either. Your job is

1 to answer the questions as representative of Cole
2 Kepro regarding the 9019 for most practical purposes;
3 right?

4 I don't intend to ask you your opinion about
5 the claims. I don't intend to ask you whether you
6 think the claims are true or false or what your
7 defenses are going to be to them if they're ever
8 litigated. I'm just seeking your awareness or lack of
9 awareness right now; okay?

10 A I'm -- I'm aware -- I'm aware that there is
11 a -- that there is a complaint. I do not for the life
12 of me understand what defective -- what they mean by
13 "defective."

14 Q Okay. Well, I want to make sure that I get
15 your testimony about what you're aware of and what
16 you're not aware of.

17 A Okay.

18 Q Let me please ask you to look at Exhibit
19 Number 2 for a moment. Let me know when you can see
20 it.

21 (Exhibit 2 was marked for
22 identification.)

23 A It's loading now.

24 MR. LOW: And I'm going to object to
25 Exhibit Number 2 for relevance.

1 And I think Justin knows what's coming
2 next, the pending procedural. But I think he's trying
3 to stay away from it, so I'll --

4 MR. STROTHER: I hope to.

5 MR. LOW: Yeah.

6 MR. MATOTT: And Andrew Matott on
7 behalf of the committee. I just -- I don't think
8 we've stated that just an objection on behalf of Taft
9 or the debtor is joined by the committee.

10 MR. STROTHER: For what it's worth,
11 Counselors, I will agree that one objection by one of
12 you is good for all the other attorneys present.

13 THE WITNESS: I have the complaint in
14 front of me.

15 BY MR. STROTHER:

16 Q Thank you. Mr. Cook, for the record,
17 Exhibit 2 is the file-stamped complaint in the lawsuit
18 filed by Cash Cloud against Cole Kepro. When is the
19 last time you looked at this complaint?

20 A It would've been months ago.

21 Q Okay. I want to run through the causes of
22 action and see if you're aware of what the causes of
23 action are. First of all, will you please turn to
24 page 6?

25 A I'm there.

1 Q Okay. Do you see that the first cause of
2 action listed is "Breach of Contract"?

3 A I am on page 4, 5, 6. "Breach of Contract."
4 I see that title. Yes.

5 Q So you're now aware that Cash Cloud is
6 suing -- filed suit against Cole Kepro for breach of
7 contract; yes?

8 A I'm reading that.

9 Q Is that a surprise to you?

10 MR. LOW: Same objection, relevance and
11 prior proceeding.

12 But go ahead, Fred.

13 THE WITNESS: No. I found -- no,
14 that's not surprising.

15 BY MR. STROTHER:

16 Q Okay. Will you turn to the next page,
17 please?

18 A It's not surprising to me with respect to
19 that I was sued after not being paid. It is
20 surprising to me because there's never been a -- I was
21 never provided any evidence of something not working.

22 Q Objection, nonresponsive.

23 The -- are you on page 7 now?

24 A I am.

25 Q Okay. The second cause of action is "Breach

1 of the Implied Covenant of Good Faith and Fair
2 Dealing." Are you aware that Cash Cloud is suing Cole
3 Kepro for that cause of action?

4 A I'm reading it. I'm reading it. As I said
5 before, I think this is complete and utter
6 fabrication.

7 Q Okay. Object as nonresponsive. Let me see
8 if I can move on after asking another couple of
9 questions.

10 As you sit here today, you're aware, aren't
11 you, that Cash Cloud has filed a claim against Cole
12 Kepro and is seeking millions of dollars? Whether you
13 agree with it or not, you're aware that that is
14 something that has happened; right?

15 A I am.

16 Q Okay. Let's move to the next topic.

17 When did you first understand that a sale of
18 the litigation against Cole Kepro was something that
19 was going to happen in the Cash Cloud bankruptcy?

20 MR. MATOTT: Objection.

21 A I was not aware that a sale of the
22 litigation is something that was going to happen.

23 Q When did you become aware of that?

24 A I was not aware of that.

25 MR. MATOTT: Objection.

1 BY MR. STROTHER:

2 Q I mean, are you not aware of it as you sit
3 here today?

4 MR. MATOTT: Objection.

5 A I don't understand what your question is.

6 Q Well, is it not true that Cole Kepro is
7 offering to buy that litigation and have that
8 litigation transferred to Cole Kepro?

9 MR. MATOTT: Objection.

10 A I am aware that we have negotiated -- I'm
11 aware that my attorneys have negotiated with the
12 creditor's committee a -- a settlement, which would
13 allow me to go forward and resolve this issue so that
14 we can get on with life and keep the company going.

15 Q Okay. Well, you know that -- don't you,
16 that litigation of -- strike that.

17 It's true that Cash Cloud has other
18 litigation against other parties other than Cole
19 Kepro; right?

20 A I know that.

21 Q And those are assets of the Cash Cloud
22 estate; true? You know that as a member of the
23 committee?

24 A They are.

25 MR. MATOTT: Objection.

1 BY MR. STROTHER:

2 Q And you know that Cash Cloud is not
3 reorganizing in bankruptcy; right?

4 A I do -- I do know that.

5 Q And so you're aware that Cash Cloud is
6 selling its assets; true?

7 A I know that Cash Cloud is attempting to sell
8 its assets.

9 Q Which included or includes the litigation
10 against Cole Kepro; right?

11 MR. MATOTT: Objection.

12 A I am aware that they are viewed as assets.
13 I have personal feelings on the validity, the
14 appropriateness of the litigation, and whether or
15 not -- on the collectability of the -- of the
16 litigation and whether or not they are legitimate.

17 I am aware that -- I am aware that the
18 committee is trying to maximize recovery for the
19 unsecured creditors.

20 Q Are you familiar with bids placed by other
21 entities for assets of Cash Cloud?

22 A I am not.

23 Q So when entities would place bids that did
24 or did not include the litigation against Cole Kepro,
25 were you not made aware of those?

1 MR. LOW: Asked and answered.

2 BY MR. STROTHER:

3 Q You can answer, Mr. Cook.

4 A I did. No, I was not aware.

5 Q Okay. My apologies. I didn't hear you.

6 A Yep.

7 Q Well, let me ask you about what has Cole
8 Kepro told the debtor about Cole Kepro's financial
9 status?

10 A Under a confidentiality agreement, we -- and
11 when you say "the debtor," we have provided Province
12 a -- a look into our financials.

13 The \$20 million of purchases to support the
14 Coin Cloud purchase orders and the \$9.4 million of
15 receivables unpaid as well as the work in process of
16 almost 2,000 completed, unshipped invoices,
17 kiosks -- kiosks has put us in a terrible cash
18 position.

19 We -- that being said, we have not paid
20 attorneys in a year and a half. We have a number of
21 Coin Cloud suppliers who have not been paid. We owe
22 many millions of dollars, and we have worked on a
23 cashflow program with our suppliers that we have put
24 those bills, those payments on hold.

25 We have worked with our bank. We are in

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1 forbearance with our bank. But we are cash flowing
2 positive, having put a number of those payments on
3 hold, with the understanding that an insurance payment
4 will allow us to make the bank whole. It'll allow us
5 to pay the majority of our accounts payable and will
6 allow us to manage the business from cashflow.

7 And again, we are cash flowing. We've gone
8 from 200 and some employees to 70 employees. But we
9 are cash flowing. We have provided that information
10 to Province under a confidentiality agreement, which
11 they have honored.

12 But without the insurance policy, I do not
13 see the company managing its way out, and I know
14 the -- the quality of the products we put out. I know
15 that they're working in the field.

16 I know the group that purchased the assets
17 of Coin Cloud out of bankruptcy has tested the four
18 generations of products that we've provided. And with
19 their software, the products work beautifully.

20 Q But --

21 A We've provided the debtor through Province
22 an understanding of the finances of the company.
23 Again, we had the foresight to insure against
24 bankruptcy, and we are holding on to follow this to
25 fruition.

1 Q Why did you feel it -- strike that.

2 Why did you share any information about Cole
3 Kepro's financial status with the debtor?

4 A Because I wanted them -- I wanted the debtor
5 to independently verify, number one, the
6 collectability from Cole Kepro of a -- of potentially
7 winning a lawsuit against us, number one.

8 But I also wanted them to investigate the
9 merits, and I wanted them to try to understand that
10 the claims, which were verbally put out there, that
11 the machines just stopped working were not verifiable
12 from any of the technical people at Coin Cloud who
13 were still there.

14 So I wanted the people that were left
15 managing this to do some investigation, to understand
16 that it was a disingenuous suit and a -- a strategy to
17 not pay the bill. And -- and to do that, I opened my
18 books and showed them what was going on.

19 Q Object to the nonresponsive portion.

20 Mr. Cook, you've indicated that you might be
21 asking for this deposition to be abbreviated or at
22 least put on pause for a while.

23 A With that being said, I'm going to send
24 a -- I'm going to send a text message to put off this,
25 and I want to continue this. I want to get it done.

1 Q Okay -- I need to finish what I was saying,
2 please.

3 A I'm sorry. Go ahead.

4 Q I'm not asking you, nor will I ever ask you,
5 for your thoughts about the merits of the claims.

6 A Okay.

7 Q And so anytime you feel compelled to answer
8 that, you're probably not answering my question, and
9 you're going to continue to get these "nonresponsive"
10 objections. And you're going to waste time.

11 So please, please answer the questions I'm
12 asking, and try to restrain yourself from throwing in
13 your comments and thoughts about the merits of the
14 claims.

15 A Justin, I'm trying to -- I'm trying to be
16 respectful of your time and my time.

17 Q I appreciate it.

18 A And I will -- I will keep my comments to
19 myself. Bear with me --

20 MR. MATOTT: I would object on behalf
21 of the committee as to that colloquy being
22 unnecessary, as the question was answered.

23 MR. STROTHER: And are we taking a --

24 THE WITNESS: No, no. No, no. This'll
25 take me 15 seconds.

1 Okay.

2 BY MR. STROTHER:

3 Q Okay. Mr. Cook, you -- my previous question
4 was why did you tell the debtor anything about Cole
5 Kepro's financial status? My follow-up question is
6 the financial status that you shared with them
7 included information about the many millions that Cole
8 Kepro owed to its lender. Is the lender Fifth Third
9 Bank?

10 A It is.

11 Q And how much money does Cole Kepro owe to
12 Fifth Third Bank?

13 A \$11.4 million as of today. When
14 Coin -- when Coin Cloud went bankrupt, we owed them
15 approximately -- a little over 20 million, and in the
16 last 14 months, we've paid them back almost \$10
17 million.

18 Q Okay. I'm going to have, I think, more
19 questions about that relationship, the forbearance.
20 But you brought up the insurance policy there, too, so
21 I need to ask you a few questions about that.

22 But let me back up and ask you -- you said
23 that Cole Kepro is in a terrible cash position.
24 What -- who is currently managing Cole Kepro?

25 A I am.

1 Q Okay. Have you hired a workout specialist
2 or consultant or someone else like that?

3 A We do have -- at the request of the bank, I
4 have bank observers.

5 Q Okay.

6 A I have bank observers.

7 Q Okay. Are those people that are selected by
8 First Third Bank [sic], or did you, Cole Kepro,
9 independently hire them?

10 A We independently hired them, and they were
11 suggested by Fifth Third Bank. But we're paying for
12 them.

13 Q Are they reporting what they observe to
14 Fifth Third Bank?

15 A They are with respect to that they are
16 approving every check that we write.

17 Q Okay. And is that -- it sounds like that is
18 something more than input, meaning these observers
19 actually have some control over what Cole Kepro does
20 with Cole Kepro's funds?

21 A They have not refused any requests that I've
22 made. They were brought in to provide an observing
23 13-week cashflow, which they've done. And they work
24 with our team as we move forward. As I said, they've
25 provided confirmation of the cashflow-positive nature

1 of our business.

2 Q But if one of these observers said
3 "no" -- and I understand your testimony is they've not
4 yet said "no" to anything you've requested. If one of
5 them said "no," then Cole Kepro couldn't write that
6 particular check?

7 MR. LOW: Objection, calls for
8 speculation.

9 Go ahead, Fred.

10 THE WITNESS: Yeah. If -- if that
11 happened, I'd be all over our relationship managers.
12 Yeah, that has not happened.

13 BY MR. STROTHER:

14 Q Do the observers have any management
15 control?

16 A No.

17 Q Do they have input?

18 A At this point, no, other than I
19 do -- they're very professional. I respect their
20 opinions, and I work closely with them, as does the
21 rest of my team.

22 Q Has Cole Kepro threatened bankruptcy?

23 A No.

24 Q Has Cole Kepro told anyone that it's
25 considering filing bankruptcy?

1 A No.

2 Q Does Cole Kepro have bankruptcy counsel?

3 A Only supporting me on the Unsecured
4 Creditors' Committee, but no. In that -- in -- in the
5 way that you're alluding, no. We are running this as
6 an ongoing concern. We have cashflow going forward.

7 Our position is that -- and I'm sure you'll
8 say it's nonresponsive, but that we've never made a
9 bad product and that we will -- in the fullness of
10 time, the court system will come to the understanding,
11 and we'll move on.

12 Q But you testified earlier, a few moments
13 ago, about the insurance policy. And didn't you say
14 that without the insurance policy, there's -- I wrote
15 down "no way out"?

16 A No. Well, then I -- I think we can listen
17 to the transcript. I will tell you that I come in the
18 office at four o'clock in the morning, and I work
19 until eight or nine at night. I will tell you that we
20 are down to 70 employees from 200 employees.

21 This is a very, very, very difficult
22 endeavor. I'm much too old to do this forever. It
23 would be very easy to say goodbye and to hand the keys
24 to the bank. But I see a good, strong, cash flowing
25 company that makes good products.

1 The people that bought the Cash Cloud
2 assets, you know, are looking to buy more products.
3 You know, I see us being here. We paid for an
4 insurance policy when we were concerned that we had
5 too much concentration in one entity. We made all
6 those payments. I want to play the game to collect
7 them.

8 Q Well, if the insurance policy does not pay,
9 do you believe that Cole Kepro is going to make the
10 bank whole? And I'm using your words.

11 A We do have three or four large
12 opportunities, one which I'm not going to disclose
13 with a major bank that will dwarf Coin Cloud. So
14 there is a possibility to cashflow out of this.

15 But the best way out is for the insurance
16 company to determine that Coin Cloud is bankrupt, that
17 the products that we provided met the fit, form, and
18 function that we said they would.

19 I have no control over the software that
20 Coin Cloud put on their machines. I'm a hardware
21 provider. I can't speak to machines potentially not
22 working in the field. I can -- especially if software
23 has been changed. But in sunshine, there's a great
24 disinfectant.

25 And, you know, you spend a couple hundred

1 thousand dollars a year on insurance payments with the
2 expectations they get paid.

3 Q Well, you said that the best way
4 forward -- I think those were your words, "best way
5 forward." It may be that what you just described was
6 the best way forward for Cole Kepro and maybe for
7 Fifth Third, but why would it be the best way forward
8 for the debtor?

9 MR. MATOTT: Objection, calls for
10 speculation.

11 A I -- I could speculate that the debtor
12 realized that -- that the lawsuit --

13 Q -- speculate. I mean --

14 A -- the lawsuit was bullshit, and this was
15 their best way to get some money, because if it -- you
16 know.

17 When I talked to the -- when I talked to the
18 Coin Cloud employees and when I talked to the Coin
19 Cloud employees other than the CEO and the CFO, I've
20 never been able to confirm any of these issues.

21 Q I object to the nonresponsive portion of
22 your answer there.

23 If Cole Kepro doesn't receive the insurance
24 proceeds that we've been discussing, is it likely that
25 Cole Kepro would be forced to commence its own

1 bankruptcy proceedings?

2 MR. LOW: Objection, calls for
3 speculation.

4 A For the last 14 months, I've been cash
5 flowing positive. I've been able to pay the bank back
6 a close to \$10 million and over advance, and we're
7 still here.

8 Q So my question is, is it likely that Cole
9 Kepro would have to file for bankruptcy protection if
10 it doesn't get the insurance proceeds?

11 A That's -- that -- that's an option, not one
12 that I've considered at this point.

13 Q Do you think it's likely?

14 A No. I think it's likely that we'll move
15 forward cash flowing positive, working with the bank,
16 and look to either get our day in court or a
17 resolution to this lawsuit.

18 Q Do you know how much money Cash Cloud has
19 paid to Cole Kepro?

20 A I -- it's somewhere between \$30 and \$50
21 million. I have -- those -- those numbers are
22 available.

23 Q Understood. We can work within that range.
24 I don't have hyper-specific questions.

25 Where did that -- those proceeds go? Where

1 did cash -- where did Cole Kepro spend or put that
2 money?

3 A The purchased components associated with a
4 Cash Cloud kiosk are mostly in purchased inventory.
5 There's special-purpose banknote recyclers. There are
6 -- locks. There are computers.

7 And so the purchased content associated with
8 the cabinet is -- is quite high. So on the -- let's
9 take \$30 million for a round number. You take 20
10 million-plus in purchased components that would go to
11 the banknote folks or the computer folks or the wiring
12 harness folks. The sheet metal and the assembly
13 associated with it is high.

14 As a result of the -- the volumes that Coin
15 Cloud was purchasing from us, we made a \$7
16 million -- \$6 million investment in new laser
17 equipment, in higher productivity, press brake
18 operations, in improved welding, in improved nitrogen
19 generation.

20 But the -- the Coin -- of the \$30 million,
21 those dollars went back into inventory, and they went
22 on to paying off a larger line. We went -- I believe
23 it was -- it was as high as a \$25 million line
24 of -- line of credit with a bank where I think we
25 started out somewhere around 7 or 8 million, all

1 associated with Coin Cloud.

2 Q Okay. So thinking about the inventory,
3 specifically the inventory that was manufactured for
4 the Coin Cloud, the Cash Cloud order, who currently
5 possesses those kiosks?

6 A The -- those are -- well, the ones that we
7 manufactured, going forward, those are in our
8 building.

9 Q But are they -- go ahead. I'm sorry.

10 A We -- at -- at a point, we were shipping 500
11 kiosks a week, and we were three weeks ahead on
12 production when Coin Cloud stopped paying us. So I
13 had a thousand kiosks completed and through my initial
14 QC.

15 I had a thousand kiosks in work in process,
16 completed minus the issuance of the banknote recycler
17 and the monitors, which is probably \$1,000 a unit.
18 But I had those banknote recyclers in inventory, ready
19 to be issued. So they are taking up approximately
20 15,000 square feet of warehouse storage here at my
21 facility.

22 Q Mr. Cook, would you look at Exhibit 3 for
23 me?

24 (Exhibit 3 was marked for
25 identification.)

1 A Yes.

2 Q This is a flier, a news -- a press release
3 from American Kiosks -- or American Kiosk. Is that a
4 subsidiary or an affiliate of Cole Kepro?

5 A That is a brand.

6 Q Is it a -- so it's not a separate entity?

7 A No.

8 Q Okay. Then that may easily answer my next
9 question, which was did Cole Kepro transfer any of
10 those kiosks to American Kiosks? But if
11 they're -- you're telling me they're the same entity?

12 A It's the -- it's the same entity.

13 Q Okay.

14 A Cole -- Cole Kepro is the company. I have a
15 kiosk division, I have a gaming division, and I have a
16 locker division.

17 Q Okay. Does -- let me broaden the question
18 then. Has Cole Kepro transferred any of the kiosks to
19 any other entities?

20 A No.

21 Q All right. Let me ask you about the
22 communications regarding the purchase offer from Cole
23 Kepro for the Cole Kepro litigation.

24 MR. MATOTT: Objection.

25 //

1 BY MR. STROTHER:

2 Q And perhaps the best way to do this is for
3 me to make the motion that was filed to approve that
4 transaction an exhibit as well. So give me a moment,
5 and I'm going to ask you to look at Exhibit Number 4.

6 (Exhibit 4 was marked for
7 identification.)

8 A Mm-hmm.

9 Q Okay. You should be able to see it when you
10 go into your folder.

11 Mr. Cook, has it shown up yet?

12 A It has not. I'll let you know. It's
13 generating the file preview. May take a while, it
14 said.

15 There it is.

16 Q Okay. Do you see over on the right-hand
17 side that this is the motion to approve the settlement
18 agreement with Cole Kepro?

19 A Yes.

20 Q Okay. Let me ask you to look at a specific
21 page. Let me ask you to go to page 4 regarding the
22 terms.

23 A Page 4 of 8? "Terms of Settlement." Here
24 it is. Yes.

25 Q Okay. Please look at paragraph 9a, listing

1 the first term. Would you take a moment to read that
2 to yourself?

3 A Yes. I've read it.

4 Q Do I understand correctly or is your
5 understanding -- let's ask it that way. Is your
6 understanding that this term has Cole Kepro signing a
7 promissory note in the amount of \$850,000 to the
8 debtor?

9 A That is well-stated. That is correct.

10 Q Okay. Let me ask you about the second term,
11 which is paragraph 9b. Will you read that to
12 yourself?

13 A I'm familiar with the intercreditor
14 agreement negotiated with Fifth Third Bank.

15 Q Okay. So is this term basically that Fifth
16 Third Bank has agreed to subordinate any interest it's
17 got in insurance proceeds so that \$850,000 of
18 insurance proceeds could be used to pay off that
19 promissory note mentioned in the previous term?

20 A That is correct.

21 MR. MATOTT: Just objection. The
22 document speaks for itself.

23 BY MR. STROTHER:

24 Q And will you please look at the third term,
25 which is paragraph 9c?

1 A I've read it.

2 Q Thank you. Is that third term basically
3 that Cash Cloud will allow a claim, an unsecured
4 claim, by Cole Kepro in the amount of approximately
5 \$9.4 million?

6 MR. MATOTT: Same objection.

7 A I read this that Coin Cloud acknowledges
8 that there's no dispute, setoff, counterclaim, or
9 other objection with respect to the digital cash
10 machines.

11 Q Okay. Well, let's talk about the second
12 term real fast. You said you're familiar with the
13 intercreditor agreement. Do you -- what is your
14 understanding of whether Fifth Third Bank has
15 communicated that it intends to execute the
16 intercreditor agreement?

17 A It is --

18 MR. MATOTT: Objection to the extent it
19 calls for speculation.

20 BY MR. STROTHER:

21 Q Yeah, I'm not asking you to speculate. I'm
22 asking you what your understanding is.

23 A My -- my understanding is that this
24 intercreditor agreement was written by the Fifth Third
25 attorneys and provided to Cole Kepro in -- you know,

1 we had kept the bank apprised of where things were
2 going.

3 And their attorneys provided the language in
4 conjunction with our attorneys so that this is
5 something that the -- my understanding was that this
6 is something that was written by and blessed by the
7 bank.

8 Q When did Cole Kepro first communicate to the
9 debtor or the committee that Cole Kepro was interested
10 in a transaction like the one we're looking at right
11 now?

12 A It would've been late June 2023.

13 Q Okay. 2023; right?

14 A Yes.

15 Q How was that communicated to -- first of
16 all, was it communicated to the debtor or the
17 committee?

18 A It was communicated to Tanner James and Dan
19 Moses at Province in an email.

20 Q Who sent the email?

21 A I sent an email to Tanner James saying I'd
22 like to discuss -- I sent an email to Province stating
23 in my capacity as the CEO of Cole Kepro, not in my
24 capacity as being on the Unsecured Creditors'
25 Committee, I was interested in investigating whether

1 or not we could come to a resolution over this
2 dispute.

3 Q At that point in time, had you yet
4 investigated the possibility of Cole Kepro filing an
5 insurance claim on the debt that Cole Kepro alleges is
6 owed?

7 A We had filed an insurance claim -- my
8 understanding is in April of 2022, when Coin Cloud
9 went 90 days past due on their -- on their payments
10 from the first of the year.

11 Q Well, let's segue into that real fast and
12 maybe come back to Cole Kepro's proposed purchase
13 here. Did -- and let's refer to the entity that we
14 were talking about a couple of hours ago as "the
15 insurer" or "the insurance company."

16 Did the insurer respond to that claim filed
17 by Cole Kepro?

18 A I believe they did.

19 Q What was that response?

20 A They said that -- needed to resolve -- my
21 understanding and -- was that the -- the fact that it
22 was a disputed receivable kept it from being paid.
23 Also, at the point that we filed the claim, Coin Cloud
24 was not bankrupt. So it was attempting to reorganize.

25 Q Did Cole Kepro -- and -- wait. I'm sorry.

1 Strike that.

2 Did you say at the time you filed the claim,
3 Cole -- at the time you filed the claim, Cash Cloud
4 had already filed for bankruptcy?

5 A Had not filed for bankruptcy.

6 Q Had not. Okay. Thank you for clarifying.
7 I'm sorry I misheard you.

8 When did Cole Kepro inform the insurance
9 company that Cash Cloud was disputing the claim?

10 A I believe when we filed the insurance claim.

11 Q Who actually filed the claim?

12 A Would've been my chief financial officer,
13 Andrew Cashin, C-A-S-H-I-N, through Oswald Insurance,
14 an insurance professional named Mike Casey.

15 Q Would you mind spelling "Casey"?

16 A C-A-S-E-Y.

17 Q Thank you.

18 Did Cole Kepro ever inform the insurance
19 company that Cash Cloud had actually sued Cole Kepro?

20 A I do not know that for a fact. I assume we
21 did, but I do not know that for a fact.

22 Q Let's go back to the communications between
23 Cole Kepro and the insurance company. After the
24 insurance company indicated to Cole Kepro that because
25 of there being a dispute, the claim wouldn't be paid

1 immediately, was there any additional communication
2 between Cole Kepro and the insurance company about
3 that claim?

4 A Not by -- not by me. I know that our
5 insurance professionals came back and said Coin Cloud
6 going bankrupt would trigger the next step in the
7 resolution of the claim.

8 Q Has the insurance company ever communicated
9 to Cole Kepro one way or the other that it would pay
10 Cole Kepro's claim?

11 A They have said that we filed it properly,
12 and they have never said -- I have not gotten any
13 correspondence saying that they would pay or they
14 wouldn't pay.

15 Q Is there anyone else on Cole Kepro's behalf
16 that might have gotten correspondence that said
17 they -- that the insurance company would or would not
18 pay?

19 A Not to my knowledge.

20 Q Has Cole Kepro shown the insurance company
21 the exhibit that you and I were just looking at,
22 Exhibit 4, which is the motion to approve the
23 transaction?

24 A I do not know.

25 Q Has Cole Kepro discussed with the insurance

1 company, either verbally or in writing, the proposed
2 terms of the deal that you and I talked about a few
3 moments ago?

4 A I do not know. This has been handled by the
5 attorneys at Taft.

6 Q So is your testimony that it may be that the
7 insurance company is aware of this proposed settlement
8 agreement --

9 A It's my --

10 Q -- but the person that knows that would be
11 Taft attorneys?

12 A It's my testimony that this high-stakes
13 insurance legal question is better handled by
14 attorneys and that there are insurance attorneys and
15 insurance professionals who have carried on the
16 communications recently with Euler Hermes.

17 Q So it's clearly more than a matter of just
18 simply filing the claim correctly; right?

19 A I don't think so. I believe it's a matter
20 of getting the acknowledgement from the debtor that
21 there is not an issue, and my understanding is the
22 timeline is 15 days for resolution and 30 days for
23 payment.

24 Q But you're providing that opinion without
25 knowing whether or not the insurance company knows

1 about the terms of your deal; right?

2 MR. MATOTT: Objection.

3 A I can't -- I don't know that.

4 Q Meaning -- right. You don't know whether
5 the insurance company knows that the -- that through
6 paying money to the debtor that the debtor is going to
7 agree to not fight Cash Cloud's claim; right?

8 MR. LOW: Objection --

9 MR. MATOTT: Objection.

10 MR. LOW: -- was multiple layers of
11 speculation.

12 THE WITNESS: I have no idea. Like
13 I -- like I stated before, I've had no correspondence
14 with respect to any of this.

15 BY MR. STROTHER:

16 Q And if your -- I don't want to know what you
17 have -- you know, the meat of any conversations you
18 had with your attorneys. But if your attorneys were
19 communicating with a third party on your behalf, that
20 communication's not privileged.

21 And so I'm trying to find out -- you're the
22 CEO of Cole Kepro. If they're out there,
23 communicating on your behalf, you're telling me right
24 now that they may or may not have given this
25 information to the insurance company? You just don't

1 know?

2 A That's correct.

3 MR. MATOTT: Objection.

4 BY MR. STROTHER:

5 Q Okay. Has anyone told you that there is a
6 possibility that the insurance company will not pay
7 out on this claim?

8 A No.

9 Q What do you understand the current status of
10 the claim to be?

11 A Waiting for resolution on the defective
12 portion, which is addressed in the settlement
13 agreement where the debtor says that there is not, has
14 not, and will never be a defect.

15 Q And you're not aware of that being the
16 debtor's position right now; are you?

17 MR. MATOTT: Objection.

18 BY MR. STROTHER:

19 Q I can ask it a slightly different way if --

20 A Well, I'll -- I'll -- the document, which I
21 just read, I read for the first time when it was put
22 on Stretto, when it was provided as a settlement
23 document for the Court, and I read it at that point.
24 And I can live with that.

25 Q Mr. Cook, my question is you're aware that

1 the litigation against Cole Kepro, while stayed, is
2 still an active lawsuit? It's not been dismissed.
3 You understand that; right?

4 A I'm --

5 MR. MATOTT: Objection.

6 THE WITNESS: Excuse me.

7 I'm -- I'm aware that the litigation
8 has not gone away.

9 BY MR. STROTHER:

10 Q Okay. And you're aware that the statement
11 that you are pointing out to me a couple of times in
12 an unapproved settlement agreement, that the only way
13 according to that proposed settlement agreement that
14 the debtor makes the acknowledgment that you're
15 pointing to is if the other parts of the deal happen;
16 right?

17 A I'm aware that with the settlement
18 agreement --

19 MR. MATOTT: Objection.

20 THE WITNESS: -- that many different
21 things have to come into play.

22 BY MR. STROTHER:

23 Q It's not your testimony that the debtor has
24 told Cole Kepro that the debtor is going to simply
25 allow the claim; right?

1 A You and I read the same document.

2 Q True. So I'm making sure that you're not
3 extrapolating from that and telling me that even if
4 this agreement weren't approved, Cole Kepro was simply
5 going to -- I'm sorry, Cash Cloud was simply going to
6 allow Cole Kepro's unsecured claim.

7 A I don't know what they're going to do.

8 MS. MATOTT: Objection.

9 BY MR. STROTHER:

10 Q That's not my question. They haven't told
11 you that; right?

12 A Excuse me. In an official capacity, no. In
13 an official capacity, this is the document that I'm
14 working with.

15 Q And there have been no communications
16 contrary to this document --

17 MR. MATOTT: Objection.

18 BY MR. STROTHER:

19 Q -- from the debtor to Cole Kepro; fair?

20 A There have been lots of correspondence from
21 the debtor to Cole Kepro.

22 Q I used the word "contrary," and not
23 correspondence about anything under the sun. It was
24 limited to this document. So my question was you're
25 not aware of any contrary communications to this

1 document made by the debtor to Cole Kepro; are you?

2 A Not -- not at this time.

3 Q Are you aware of any valuation of Debtor's
4 claims against Cole Kepro?

5 MR. MATOTT: Objection to the extent it
6 would call for anything that's privileged.

7 A I am not.

8 Q Are you aware of any analysis of Mr.
9 McAlary's offer to purchase the litigation against
10 Cole Kepro?

11 A I am not.

12 Q Are you aware of any analysis that the
13 committee did of Cole Kepro's offer to purchase the
14 claims against Cole Kepro?

15 A I am not.

16 MR. MATOTT: Same objection.

17 BY MR. STROTHER:

18 Q Go ahead. I couldn't hear you.

19 A I am not. As I stated before, there has
20 been more than an arm's length recusal associated with
21 anything associated with this with not only the
22 committee professionals, but the other members of the
23 committee.

24 Q When potential purchasers were considering
25 buying the claims that the debtor had against

1 Cole -- has against Cole Kepro, did any potential
2 bidder reach out to Cole Kepro to get Cole Kepro's
3 position on the claims?

4 A Justin, let me be clear.

5 MR. LOW: Objection.

6 THE WITNESS: I was not aware that
7 there were other people looking to buy the claims. No
8 one reached out to me. No one reached out
9 with -- no -- no one reached out with anything to do
10 about buying this litigation claim.

11 BY MR. STROTHER:

12 Q Did anyone ever reach out to you about the
13 litigation claim, not necessarily purchasing, but just
14 "There's this claim that the debtor has against Cole
15 Kepro. What's the story?"

16 A No.

17 Q Did I hear you say "no"?

18 A No.

19 Q Okay. Did FTI ever discuss with Cole Kepro
20 anything about the claims that the debtor has against
21 Cole Kepro?

22 A No. I've had no discussions with FTI
23 about -- about the claim.

24 MR. STROTHER: Okay. It is 3:20.

25 Would you mind if we took a quick break? I can take a

1 look and determine at this point how much longer I
2 think I'll need to be.

3 THE WITNESS: Okay. I'll be here.

4 MR. STROTHER: Okay.

5 THE REPORTER: We'll be off the record
6 at 3:20.

7 (Off the record.)

8 MR. STROTHER: Mr. Cook, I have --

9 THE REPORTER: We are back on the
10 record at 3:32.

11 Sorry.

12 MR. STROTHER: My fault.

13 BY MR. STROTHER:

14 Q Mr. Cook, I have a few more questions for
15 you. Let me go back to the negotiations for the deal
16 between Cole Kepro and the debtor that's been proposed
17 to the Court. I want to ask more questions about how
18 that proposed transaction was negotiated.

19 First, let me circle back and make sure I
20 understood your testimony so far, which is you reached
21 out to Tanner James to indicate interest in resolving
22 the matter; is that accurate?

23 A That is correct.

24 Q Okay. How did you get from that initial
25 outreach to Exhibit 4? I want to understand how the

1 sausage was ultimately made.

2 I'm going to open it up for you to see if
3 you can just answer the question, but if it gets
4 complicated, I'll break in or wait for you to stop and
5 ask you some follow-up questions.

6 A Very -- very straightforward. Reached out
7 in the morning, had a meeting early that afternoon
8 where I went to the Province facilities, explained
9 that I was interested in getting this resolved, did a
10 conversation between the two -- the principal of
11 Province, Dan Moses, and Tanner, who was the lead,
12 along with my private equity partner, Cory Gaffney.

13 We talked about what I was looking to
14 accomplish, which was a resolution so that we could
15 all move on, and agreed to put my attorney, utilizing
16 Province as the intermediary and bringing in the
17 Unsecured Creditors' Committee.

18 At that point, I handed off all negotiations
19 to the attorneys at Taft, working through Province and
20 the Unsecured Creditors' Committee. And while I knew
21 that there were discussions going on, I stayed
22 outlooking. And when I read Exhibit 4, it was the
23 first time that I saw financial terms or anything
24 else.

25 Q So at your first -- let me back up a second.

1 Your initial email to Tanner James I believe you said
2 was in April -- no, actually, I don't remember when
3 you said it was. Was it June 23?

4 A It was late -- it was late June. I -- I was
5 going to say -- I don't have a calendar in front of
6 me. June 20-something. I'd say probably 28. It was
7 close to the 4th of July weekend, because -- yes, by
8 the 4th of July, things were moving.

9 Q And did -- you went over to Province's
10 office that same day?

11 A Correct.

12 Q Did you and Province discuss any terms that
13 day?

14 A No.

15 Q So who first proposed the terms that are in
16 Exhibit 4?

17 A I have no idea.

18 Q So prior to reading Exhibit 4 -- and I'm not
19 talking about today, the first time you read it.
20 Prior to reading it, were you aware of the figure
21 \$850,000?

22 A My testimony before, absolutely not. I had
23 no idea the economic -- I had no idea on the
24 economics. I wasn't involved. I left that to the
25 attorneys and the -- and the committee professionals

1 and the debtor to work out.

2 Q Were you -- before you read Exhibit 4 the
3 first time, were you aware of the interplay between
4 the insurance proceeds and the payment proposed in
5 Exhibit 4 from Cole Kepro to Cash Cloud?

6 A No.

7 Q No?

8 A I'll say it again. I read that for the
9 first time. I did not know about promissory notes,
10 did not know about any of the terms, none.

11 Q I accept that. I want to make sure, because
12 I don't want to leave any stone unturned. So I'm
13 going to ask it a different way one last time.

14 You weren't aware of any of the terms of how
15 the dispute between Cole Kepro and Cash Cloud would be
16 resolved or how Cole Kepro would end up owning the
17 claims that Cash Cloud has against Cole Kepro prior to
18 looking at Exhibit 4?

19 A Correct.

20 MR. MATOTT: Objection.

21 BY MR. STROTHER:

22 Q Do you know if any term sheets were passed
23 back and forth between Cole Kepro and the debtor,
24 including Province, or the committee?

25 A No, I have no idea. When I said I stayed

1 out of it -- for the fourth time, I stayed out of it.

2 Q Well, why did you, the CEO, stay out of such
3 a -- I will take out the modifiers. Why did you, the
4 CEO of Cole Kepro, stay out of the deal until the deal
5 was practically done?

6 A Because I am a member of the Unsecured
7 Creditors' Committee, and I -- I pulled myself out of
8 that aspect with respect to the bankruptcy. I had
9 competent attorneys handling this on my behalf.

10 Q And do I understand you to be saying that
11 you turned over the authority to negotiate this deal
12 to your attorneys?

13 A That is correct.

14 Q And you turned over that authority with the
15 understanding that you didn't want to know the
16 progress of the transaction until the transaction was
17 ready to ink?

18 A I handled -- I handed over the negotiations
19 to my attorneys to negotiate on my behalf, and when
20 I -- what I wanted or didn't want is immaterial. I
21 did not see a term sheet. I did not have any
22 discussions with anyone until I read that document.

23 Q Okay. So back to Exhibit 1, and I don't
24 think you need to go back and look at it. I'm just
25 referring to it. If you want to go back and look at

1 it, feel free to do so.

2 A No, that's okay.

3 Q But in Exhibit 1, in the topics for
4 examination, I subpoenaed a representative of Cole
5 Kepro who could testify about your communications,
6 Cole Kepro's communications, with the debtor or
7 committee regarding Cole Kepro's offers; right? And
8 that's not you; right? You don't know anything about
9 those communications.

10 A I did not see that subpoena until I looked
11 at it this morning. I did not know about the
12 existence of this deposition until yesterday.

13 Q So --

14 A So I'm here to tell you that I can't speak
15 to the goings-on on the committee, because I recused
16 myself. I can tell you that I reached out to Tanner
17 James to get it moving, what I've testified to.

18 Q But Mr. Cook, it sounds like you recused
19 yourself from the operations of Cole Kepro. You
20 didn't participate in the negotiations in any form or
21 fashion. So I'm not asking you about --

22 MR. MATOTT: Objection.

23 BY MR. STROTHER:

24 Q I'm not asking you about the committee. I
25 just -- by the way, when I gesture like this over

1 here, it's where I have the subpoena.

2 I just want to know who on Cole Kepro's side
3 I can talk to about those communications. So is that
4 actually Cole Kepro's attorneys?

5 A Cole Kepro's attorneys
6 represent -- negotiated on behalf of the company.

7 Q Okay. So who is it at Taft that would be
8 the right witness to get that information from?

9 MR. LOW: Objection.

10 A I -- I would assume it would be, you know,
11 Andrew Matott from Seward & Kissel. It would be Lee
12 Kellett [ph]. It would be Bernadette Dennehy, my
13 general counsel. I -- I don't know. I don't know who
14 did the -- I can't speak to that. I can speak to the
15 document I read, which I'm comfortable with.

16 Q Okay. Well, when I went through these
17 various topics earlier, I thought you testified that
18 you were prepared to talk about those topics.

19 A And I'm doing it now. I'm prepared -- I'm
20 prepared to explain that, you know, I kept my level of
21 professionalism at arm's length as a member of the
22 Unsecured Creditors' -- you know, separate from my
23 Cole Kepro interests.

24 Q Understood.

25 A And I was not in a position to and did not

1 put undue influence anyplace.

2 Q Let me ask some different questions.

3 You mentioned Cory Gaffney earlier as far as
4 someone who went over to Province's office in late
5 June 2023. What was his involvement in the
6 negotiations of the proposed transaction?

7 A You -- you misunderstood. Cory Gaffney was
8 on the phone. Cory Gaffney is based on the East
9 Coast, and he was involved in flaming the desire for
10 a -- a resolution, working with them.

11 Q Did he -- after June 2023, did Mr. Gaffney
12 communicate with the debtor, including Province, or
13 the committee regarding proposed terms for this
14 proposed transaction?

15 A I do not know that.

16 Q Does he have a formal role within Cole
17 Kepro, or is he at the Anderson level?

18 A He is the managing principal of the private
19 equity company. He's on the board of directors of
20 Cole.

21 Q Okay. Let me ask you about Cole Kepro's
22 organizational structure.

23 And I want to focus on the topics and issues
24 that we've been discussing today, which would be
25 anything pertaining to Cash Cloud, including the

1 dispute, the bankruptcy, or the original underlying
2 transaction for the purchase of the kiosks. Why don't
3 I do a period there?

4 Who under you is involved in those things?

5 A It is Vic Durica, who is a sales -- VP of
6 sales. It was Andrew Cashin, who was my president and
7 chief financial officer. And from the commercial
8 terms, it would've been them. I have a complete
9 staff. But those were the two interfacing with Cash
10 Cloud.

11 Q Okay. Earlier today, I was asking you about
12 other bidders for Cash Cloud assets, and I want to
13 mention a couple to find out who on Cole Kepro's
14 behalf did any communicating with the debtor or the
15 committee or the bidders about proposed transactions.

16 One of them is Forest Road. Who on Cole
17 Kepro's behalf participated in evaluating Forest
18 Road's proposed transaction?

19 MR. MATOTT: Objection.

20 A I can say that -- I don't know. It wasn't
21 me.

22 Q Who -- and if it wasn't you, who else might
23 it have been on Cole Kepro's behalf? Would it be --

24 A I don't -- I don't know whether --

25 MR. MATOTT: Objection. I think this

1 is --

2 Sorry, Fred.

3 Really quick, just an objection lodged
4 by the committee. I think this now getting well
5 outside the scope of the exam and just frankly not
6 relevant at all.

7 MR. STROTHER: Okay. I respectfully
8 disagree.

9 BY MR. STROTHER:

10 Q And Mr. Cook, you can go ahead and answer
11 the question. I think you were about to say that you
12 don't know.

13 A I don't know that -- I don't know that
14 anyone from that company contacted anyone here. I was
15 not aware of it.

16 Q Well, no. I'm sorry. My question isn't
17 limited to direct contact from Forest Road. Forest
18 Road was a proposed plan sponsor. You're aware of
19 that; right?

20 A I am.

21 Q Okay. And so my question is if you didn't
22 participate on Cole Kepro's --

23 A I -- I misunderstood. I misunderstood.

24 Q Okay.

25 THE WITNESS: To my knowledge, no one

1 from that entity reached out. I will tell you that -

2 And Andrew, I don't know whether --

3 I will tell you on my work as -- on the
4 creditors' committee, we evaluated --

5 MR. MATOTT: I can tell you -- if
6 you'll allow me to direct you, if you're talking about
7 work on the creditors' committee regarding bids,
8 that's all privileged.

9 THE WITNESS: Yeah. Yeah.

10 MR. MATOTT: I would direct you not to
11 answer.

12 THE WITNESS: Yeah. Okay. I'm not
13 going to answer. I -- no one approached Cole Kepro,
14 to my knowledge.

15 BY MR. STROTHER:

16 Q Okay. The question that you may be not
17 answering may be different than the one I'm asking, so
18 let me clarify. I'm not asking you at this moment to
19 tell me what you did on the committee.

20 A I misunderstood. Go ahead.

21 Q I'm asking if you participated on behalf of
22 Cole Kepro with the committee pertaining to the
23 proposed transaction by Forest Road.

24 MR. MATOTT: You can testify, Fred,
25 "yes" or "no," but not about the substance, as Justin

1 directed you.

2 THE WITNESS: No.

3 BY MR. STROTHER:

4 Q Okay. Do you know who on Cole Kepro's
5 behalf participated pertaining to Forest Road?

6 A No.

7 Q Do you know if anyone on Cole Kepro's behalf
8 participated with the committee as it pertains to --

9 MR. MATOTT: Same objection.

10 A No.

11 Q I'm going to ask that same last series of
12 questions regarding Owl Creek as well. Did --

13 A No, no, and no.

14 Q Okay.

15 MR. MATOTT: Same objection times
16 three.

17 MR. LOW: I'll just add that it assumes
18 facts not in evidence, but --

19 BY MR. STROTHER:

20 Q Okay. Mr. Cook, I think the final thing I
21 wanted to ask you is from time to time, I've seen you
22 reach over and either type or text. I've got to ask
23 just for the record, were you communicating with
24 someone about this deposition?

25 A Absolutely not.

1 Q Were you communicating with your attorneys
2 during the deposition about questions that were on the
3 table?

4 A Never. No.

5 Q Okay. Have you been making notes during the
6 deposition about the deposition?

7 A Only -- only "Justin Strother" and -- no.
8 No, I have not been taking notes.

9 Q Okay.

10 A I wrote down some names so that I wouldn't
11 be rude.

12 Q Okay. I don't know that you'll ever have
13 this topic come up again, but I do ask you to preserve
14 whatever you've written down in case it becomes
15 pertinent in the future. I can't see it, but I'm
16 willing -- if you'll raise it higher, I'll peek at it.

17 A Jonathan [sic], Dan, Adam Back from Fifth
18 Third. Those are the three names I didn't know.

19 Q Okay. I --

20 A Those are my notes.

21 Q The court reporter probably couldn't hear
22 what you just said, but I'm okay with that, if the
23 record just reflects that it was kind of trying to
24 tell us some names that were written on a piece of
25 paper.

1 A I'll -- I'll tell you what it is. I wrote
2 down your name. I wrote down the attorney from Fox
3 Rothschild and the attorney from Fifth Third, names I
4 did not know, and I -- I wrote them down.

5 MR. STROTHER: Okay. Mr. Cook, I'm
6 going to pass the witness at this time.

7 MR. LOW: No questions.

8 MR. MATOTT: Nothing from the
9 committee.

10 MR. MANN: Nothing from the debtor.

11 MR. STROTHER: Okay. We're finished.

12 THE REPORTER: I do have a few
13 questions.

14 MR. STROTHER: My apologies.

15 THE REPORTER: That's okay.

16 Do you want your client to read and
17 sign, sir, Mr. Low?

18 MR. LOW: Pardon me? Oh. Could you
19 say that again?

20 THE REPORTER: Client to read and sign?

21 MR. LOW: I don't need it. Now, I
22 don't know what the rules in Nevada are, so --

23 THE REPORTER: Okay. Do you want a
24 copy of the transcript?

25 MR. LOW: Yes, please.

1 THE REPORTER: And how about you, Mr.
2 Matott?

3 MR. MATOTT: Yeah, can I get a copy of
4 the rough transcript, please?

5 THE REPORTER: Okay.

6 And Mr. Back, do you want a copy of the
7 transcript?

8 MR. MANN: So yeah, it's Mann. Yeah, I
9 would like a copy.

10 THE REPORTER: Okay.

11 MR. STROTHER: Let me jump in. She was
12 asking Mr. Back.

13 MR. MANN: Oh, I'm sorry.

14 MR. STROTHER: It's okay.

15 MR. LOW: Yes, Adam Back.

16 MR. BACK: Yes. Not at this time, but
17 thank you.

18 MR. STROTHER: But Danny Mann does.

19 THE WITNESS: And Adam Back, nice to
20 meet you. I hadn't heard your name before.

21 MR. BACK: Nice to meet you, sir.

22 THE REPORTER: Okay.

23 MR. MANN: On my Zoom view, Adam's,
24 like, name was off. So I didn't even know he was on
25 there.

1 THE REPORTER: Okay. We'll be off the
2 record at 3:53.

3 (Signature waived.)

4 (Whereupon, at 1:53 p.m. PST/3:53 p.m.
5 CST, the proceeding was concluded.)
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CERTIFICATE OF DEPOSITION OFFICER

I, BECKY STEWART, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



BECKY STEWART

Notary Public in and for the
State of Texas

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I, AUDREY FRANKLIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



AUDREY FRANKLIN

1 In Re: Cash Cloud, Inc., D/B/A Coin Cloud v.

2 Fred Cook Job No. 6298296

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

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21 REASON_____

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23 _____

24 Fred Cook Date

25 _____

1 In Re: Cash Cloud, Inc., D/B/A Coin Cloud v.

2 Fred Cook 6298296

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Fred Cook, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Fred Cook

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

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[& - 89119]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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